

14

# Federal Register

Friday  
October 5, 1984

465-623  
G.S.A.

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## Selected Subjects

**Administrative Practice and Procedure**  
Civil Aeronautics Board

**Aviation Safety**  
Federal Aviation Administration

**Child Support**  
Child Support Enforcement Office  
Social Security Administration

**Communications Equipment**  
Federal Communications Commission

**Conflict of Interests**  
Consumer Product Safety Commission

**Drug Traffic Control**  
Drug Enforcement Agency

**Electric Power Rates**  
Federal Energy Regulatory Commission

**Endangered and Threatened Species**  
Fish and Wildlife Service

**Government Employees**  
Personnel Management Office

**Hazardous Waste**  
Environmental Protection Agency

**Hunting**  
Indian Affairs Bureau

**Income Taxes**  
Internal Revenue Service

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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.

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

## Selected Subjects

### Marine Safety

Coast Guard

### Marketing Agreements

Agricultural Marketing Service

### Mineral Royalties

Land Management Bureau

### Museums

Arts and Humanities, National Foundation

### Radio

Federal Communications Commission

### Water Pollution Control

Engineers Corps

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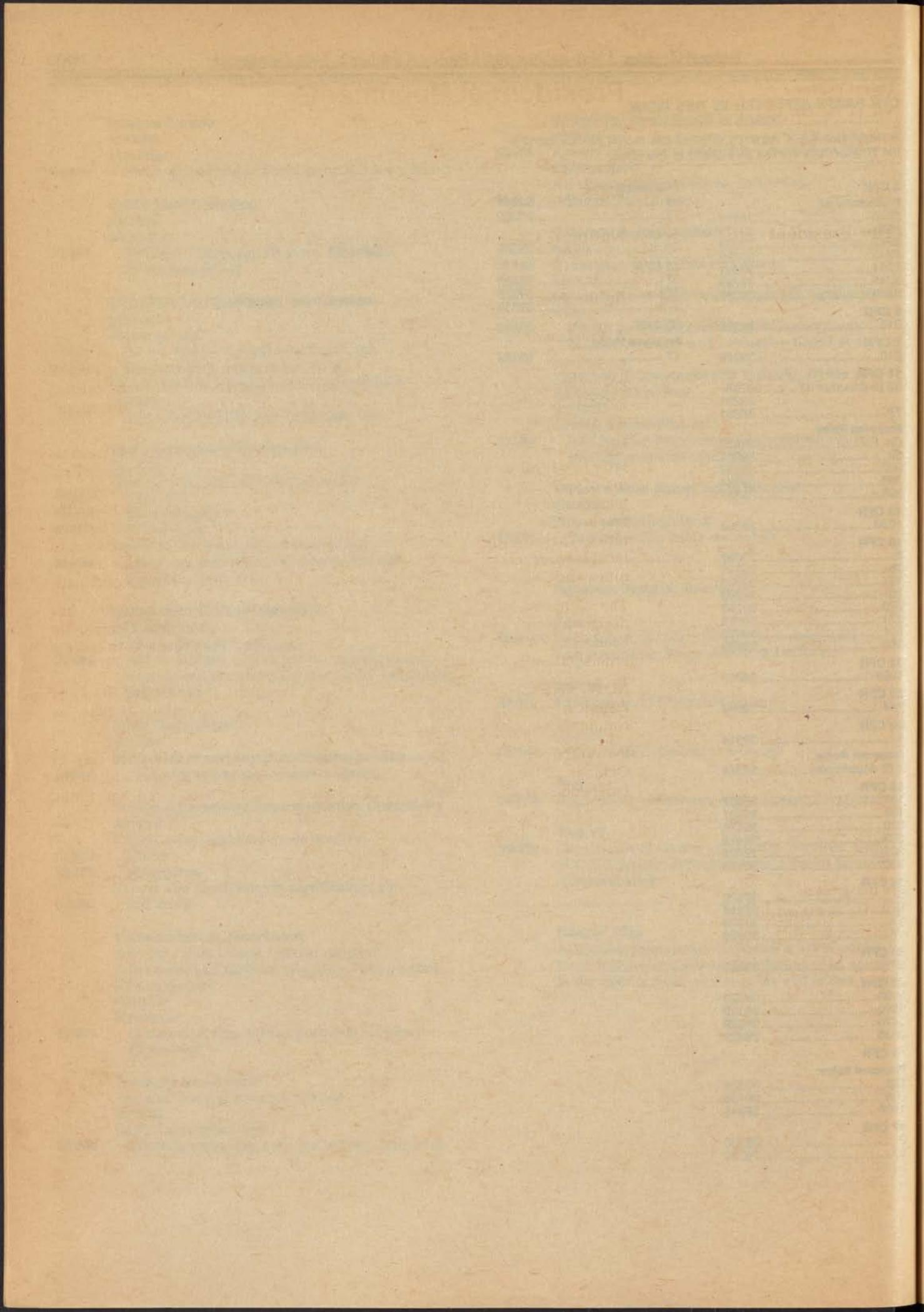
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# Presidential Documents

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Proclamation 5240 of October 3, 1984

The President

National Community Leadership Week, 1984

By the President of the United States of America

## A Proclamation

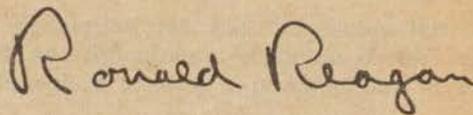
Local communities form the foundation of our Nation. Our Federal system of government is based on the determination of the people of the United States to govern themselves, to the extent possible, in small entities capable of responding quickly and effectively to particular community values and needs.

Qualified and well-trained leadership at all levels of government, but particularly in our local communities, is essential to the maintenance and strengthening of our democratic institutions. Throughout the United States, many communities have established programs to help citizens identify and discharge the responsibilities involved in leadership positions assumed in their own communities. These programs have produced thousands of talented and well-trained local leaders who are aware of the unique problems confronting their communities and are well-prepared to devise innovative solutions for those problems.

The Congress of the United States, by House Joint Resolution 574, has designated the week beginning September 9, 1984, as "National Community Leadership Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning September 9, 1984, as National Community Leadership Week.

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



Transmittal of Documents

Washington, D.C., January 2, 1942

Mr. [Name], [Address]

By the Director of the [Agency]

[Signature]

The following documents are being transmitted to you for your information and use. These documents are copies of the original documents on file in the [Agency] and are being transmitted to you for your information and use. The documents are as follows:

- [List of documents]

The documents are being transmitted to you for your information and use. They are not to be distributed outside your office.

[Signature]

## Presidential Documents

Proclamation 5241 of October 3, 1984

### Emergency Medicine Week, 1984

By the President of the United States of America

#### A Proclamation

Each year an estimated nine million people in this country sustain injuries which require immediate medical attention. Two groups of dedicated Americans provide this kind of medical care: emergency department personnel, who provide care in trauma centers, and emergency medical technicians and paramedics, most of them volunteers, who provide prehospital emergency care.

These emergency medical personnel throughout our Nation are specialists trained to handle illnesses and injuries which threaten life or limb. They must be available daily on a 24-hour basis to all patients who need medical aid. The efforts of these trained men and women have saved thousands of lives.

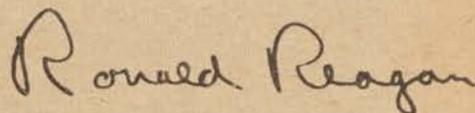
Vast improvements in emergency medicine have been made in the past fifteen years, and emergency department personnel have completed extensive training and continuing education to keep up with these improvements. The Departments of Transportation and Health and Human Services, together with State and local governments, have provided radio communications systems, equipment, and training courses for emergency medical personnel. These advances make it possible to respond quickly to the needs of the injured and to transport them to appropriate hospital emergency medical facilities within the "Gold Hour" after the injury. This is the time when emergency medical care is most effective in saving lives.

We salute the Nation's emergency medical services personnel: those who staff the ambulances, those who provide medical control, and those physicians and nurses in the trauma centers whose daily efforts are devoted to emergency medicine. We all depend upon their skills and dedication.

The Congress, by House Joint Resolution 545, has designated the week of September 16 through 22, 1984 as "Emergency Medicine Week" and has authorized and requested the President to issue a proclamation in honor of this observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 16 through September 22, 1984 as Emergency Medicine Week.

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



Examination Questions

Examination Questions  
Examination Questions

By the President of the United States of America

A. B. C.

These are the questions which were asked at the examination held on the 1st day of January, 1877, at the office of the Secretary of the Treasury, in the city of New York.

The questions were asked by the President of the United States of America, and the answers were given by the Secretary of the Treasury.

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A. B. C.

1877

## Presidential Documents

Proclamation 5242 of October 3, 1984

### World War I Aces and Aviators Day, 1984

By the President of the United States of America

#### A Proclamation

Ever since the Revolutionary War, Americans have heroically served their country in times of conflict. World War I, "the war to end all wars," began over seventy years ago in August 1914. The war spawned a new breed of warrior, the aviator, who engaged in single combat high above the conflict on the ground. The truly remarkable Americans who pioneered in this new form of military combat defended the skies of Europe with valor and distinction until the end of the war in 1918.

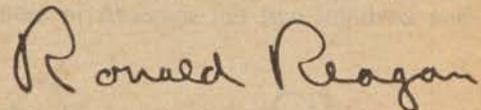
Some of these aviators achieved the title "Ace" by gaining at least five confirmed victories over opponents in the air. As aviators capable of great concentration and decisive action, they possessed what today we would call "the right stuff." Among America's greatest World War I Aces, Eddie Rickenbacker, Frank Luke, Raoul Lufbery and George Vaughn shot down a total of 78 enemy aircraft.

There are about sixty known surviving Aces of World War I. They meet periodically to share memories of a conflict familiar to many Americans only through history books. All Americans should express their gratitude and respect for these gallant air warriors for their extraordinary feats in defense of liberty.

The Congress, by Senate Joint Resolution 333, has designated September 21, 1984, as "World War I Aces and Aviators Day" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim September 21, 1984 as World War I Aces and Aviators Day.

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



Experimental Documents

Experiments on the ...

Experiments on the ...

Experiments on the ...

Experiments on the ...

The first experiment was conducted in a room of moderate size, the temperature of which was maintained at 70 degrees Fahrenheit. The subject was seated at a table, and the apparatus was placed before him. The results of the experiment were as follows: ...

The second experiment was conducted in a room of moderate size, the temperature of which was maintained at 70 degrees Fahrenheit. The subject was seated at a table, and the apparatus was placed before him. The results of the experiment were as follows: ...

The third experiment was conducted in a room of moderate size, the temperature of which was maintained at 70 degrees Fahrenheit. The subject was seated at a table, and the apparatus was placed before him. The results of the experiment were as follows: ...

The fourth experiment was conducted in a room of moderate size, the temperature of which was maintained at 70 degrees Fahrenheit. The subject was seated at a table, and the apparatus was placed before him. The results of the experiment were as follows: ...

The fifth experiment was conducted in a room of moderate size, the temperature of which was maintained at 70 degrees Fahrenheit. The subject was seated at a table, and the apparatus was placed before him. The results of the experiment were as follows: ...

James Clerk Maxwell

Printed by ...

## Presidential Documents

Proclamation 5243 of October 3, 1984

### National Adult Day Care Center Week, 1984

By the President of the United States of America

#### A Proclamation

Progress in medical science and the generally rising level of health care available from birth onwards have been among our Nation's greatest achievements in this century. As a result, more people are living to an old age than ever before.

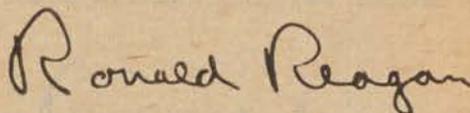
The corollary to this achievement is an increase in the incidence of chronic illnesses affecting people as they age. Those who suffer these illnesses may require care over a long period of time, a fact which tests our Nation's ability to provide older Americans the kind of care that will allow them to continue to live independently in their communities.

The rapid growth of adult day care centers is a reflection of increasing community interest in developing long-term alternatives in community settings. Adult day care centers provide comprehensive personal, medical, and therapeutic help and also assist older people and the handicapped in achieving maximum levels of independence and social interaction. They provide much needed support for families as they care for their loved ones. Many adult day care centers throughout the country have recognized the vital needs of older people and the desire that many of them have to remain in their own homes as long as possible.

To increase public awareness of the importance of these centers, the Congress, by House Joint Resolution 505, has designated the week beginning September 23, 1984, as "National Adult Day Care Center Week" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning September 23, 1984, as National Adult Day Care Center Week.

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



THE UNIVERSITY OF CHICAGO

## Presidential Documents

Proclamation 5244 of October 3, 1984

### Child Health Day, 1984

By the President of the United States of America

#### A Proclamation

America as never before is the land of opportunity for all our children. But for some, that opportunity is denied by illness or disability. Although our health care system is the envy of the world, disease or accident can still deprive many of our children of this birthright of opportunity.

Today, we celebrate tremendous accomplishments in child health. The significant and steady decline in infant mortality, and the great strides in preventing such diseases as polio or measles, are proud examples of what can be accomplished by a free and vibrant medical care system.

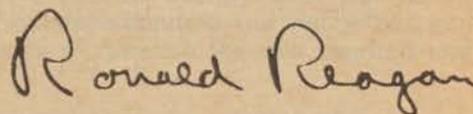
On this Child Health Day, 1984, however, we must dedicate ourselves to increasing our efforts. Past achievements only suggest that greater things can be accomplished in the future. We must dedicate ourselves to making further progress in reducing infant mortality for our whole society, and we must also seek to reduce infant mortality in those areas where the level is higher than the national average.

There also are severely handicapped infants who require not only the love and support of their families but who also must have the help of many groups in their communities—doctors, hospitals, health departments, providers of health care, and others—if they are to thrive.

There are teenage mothers and teenagers who become involved with abuse of alcohol and other substances—all these young people need our help and attention. During the coming year, it is my hope that we can continue to demonstrate what a free, energetic, and enlightened society can do cooperatively to protect and improve the health status of our Nation's most vital asset, our children.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, pursuant to a joint resolution approved May 18, 1928, as amended (36 U.S.C. 143), do hereby proclaim Monday, October 1, 1984, as Child Health Day, 1984.

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



THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

## Presidential Documents

Proclamation 5245 of October 3, 1984

### National Birds of Prey Conservation Week, 1984

By the President of the United States of America

#### A Proclamation

This Nation has been blessed with a rich variety of wildlife, including more than fifty kinds of hawks, falcons, eagles, vultures, and owls. Known as birds of prey, these species possess extraordinary beauty, strength, and power of flight. Inhabiting virtually every territory, often coexisting with man, they are a vital part of many natural systems and contribute significantly to the quality of the human environment.

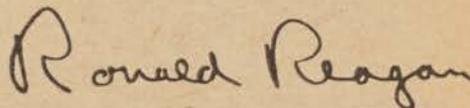
From time immemorial, the history of mankind has been intertwined with birds of prey. The silent flight of the owl, the breathtaking swoop of the falcon across a mountain cliff, the effortless soaring of vultures over the plains, and the often spectacular passage of hawks on migration have captured the imagination of Americans. Since 1782, the Bald Eagle has served as the National Emblem of the United States.

As our country continues to grow and develop, we must remember our natural heritage and the need to provide future generations with opportunities to experience the excitement of a majestic eagle, a plummeting falcon, or the haunting call of an owl at night. The prosperity of this Nation rests upon both our material wealth and those values that enrich the quality of life. The preservation and propagation of our magnificent birds of prey will mean that these noble creatures will continue to awe and inspire generations of Americans yet unborn.

To emphasize the efforts of the many Americans who share appreciation for birds of prey and the need for their continued welfare, the Congress, by Senate Joint Resolution 230 approved July 3, 1984, has designated the week of October 7 through October 13, 1984, as "National Birds of Prey Conservation Week" and authorized and requested the President to issue a proclamation for this observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 7 through October 13, 1984, as National Birds of Prey Conservation Week. I encourage all Americans to observe this week by participating in appropriate ceremonies and activities planned by government agencies, individuals, and private associations and institutions throughout the country to promote the appreciation and conservation of birds of prey.

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



Geographical Distribution

Published by the University of Chicago Press

Chicago, Illinois, U.S.A.

London, England

1954

The geographical distribution of the species is discussed in detail in the text. The species is found in the following areas: (1) the mountains of the Himalayas, (2) the mountains of the Alps, (3) the mountains of the Pyrenees, (4) the mountains of the Caucasus, (5) the mountains of the Carpathians, (6) the mountains of the Balkans, (7) the mountains of the Apennines, (8) the mountains of the Iberian Peninsula, (9) the mountains of the Iberian Peninsula, (10) the mountains of the Iberian Peninsula.

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*Handwritten signature or name*

Printed at the University of Chicago Press

## Presidential Documents

Proclamation 5246 of October 3, 1984

### National Neighborhood Housing Services Week, 1984

By the President of the United States of America

#### A Proclamation

America's neighborhoods, composed of individuals of diverse racial, ethnic, social, religious, and economic backgrounds, stand as a tribute to our Nation's democratic traditions and beliefs.

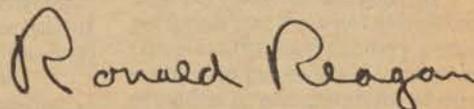
The preservation and improvement of the residential, commercial, and other facilities in neighborhoods throughout our country are essential to the strength of America's families and businesses. These have been and will continue to be the goals of the Neighborhood Housing Services programs.

Neighborhood Housing Services programs are partnerships of local residents, business leaders, and government officials. They have generated over two billion dollars in reinvestment funds to revitalize and preserve our country's neighborhoods. The success of these programs depends largely on the spirit of cooperation and voluntarism that is a hallmark of American life.

In recognition of those who have contributed their time, money, and energy to the preservation of our neighborhoods, the Congress, by House Joint Resolution 566, has designated the week beginning October 7, 1984, as "National Neighborhood Housing Services Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 7, 1984, as National Neighborhood Housing Services Week, and I call upon the people of the United States and interested groups and organizations to observe this week with appropriate activities and events.

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



THE UNIVERSITY OF CHICAGO

CHICAGO, ILLINOIS, U.S.A.

THE UNIVERSITY OF CHICAGO PRESS

*[Faint signature or stamp]*

# Rules and Regulations

Federal Register

Vol. 49, No. 195

Friday, October 5, 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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 315

#### Career and Career-Conditional Employment

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is revising regulations on the probationary period for managers and supervisors to eliminate an unintended obligation for agencies to promote certain employees who fail to complete the required probation. The new regulation applies to nonsupervisory and nonmanagerial employees who move into lower grade supervisory or managerial positions. If these employees fail to successfully complete the required probationary period, under this new regulation they would be entitled to reassignment at the grade level of the supervisory or managerial position. Previously, the agency was required to return these individuals to the grade from which they were demoted.

**EFFECTIVE DATE:** November 5, 1984.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell, (202) 632-6817.

**SUPPLEMENTARY INFORMATION:** Proposed regulations were published in the Federal Register on November 30, 1982 (47 FR 53875), for a public comment period of 60 days. OPM received written comments from 16 Federal agencies, 2 labor organizations, 1 professional organization, and 5 individuals. As explained below, OPM has clarified portions of the proposed regulations based on the comments received.

#### Authority To Regulate

Several commenters questioned OPM's authority to issue these regulations, arguing that they appear to conflict with 5 U.S.C. 3321(b)(2). This subsection provides that individuals who fail supervisory or managerial probation are entitled to return to a position of no lower grade and pay than the one the employee left to accept the supervisory or managerial position. It is plain, however, that 5 U.S.C. 3321(b)(2) does not entitle an individual who has failed to complete supervisory probation to be returned to his or her former position or equivalent if such a return would require the promotion of the employee. As explained fully in the legislative history, the statute is designed to provide a trial period for new supervisors and managers after which those who are unsuccessful will not have to undergo stigmatizing performance-based action procedures. Since performance-based action procedures are necessary only with removal or reduction in grade or pay, the situation contemplated by the statute was one in which an employee fails to complete probation after being promoted into a supervisory position.

#### Reassignment or Repromotion

The majority of agencies that commented favored eliminating the requirement to promote an employee who fails to complete the required probation. They recommended that the regulation permit employees to be reassigned or repromoted on a case-by-case basis. Several commenters believed, however, that an individual who voluntarily moves to a lower grade supervisory position should be entitled as a matter of equity to be repromoted if he or she fails probation. Under the final regulation, an employee would be entitled to reassignment at the grade level of the supervisory or managerial position. Eligibility for repromotion would then be in accordance with Federal Personnel Manual Chapter 335, Promotion and Internal Placement.

#### Effect on Retained Grade or Pay

Several commenters questioned whether the regulation affected an employee's eligibility for retained grade and pay resulting from an involuntary demotion not for cause. The final regulations do not affect an individual's right to retained grade or pay.

#### Effect on Movement Between Agencies

One commenter questioned whether the proposed regulation would cover an employee who moves to a lower grade position in a different agency. The regulations apply regardless of whether the employee moved to a lower grade supervisory or managerial position in the same or different agency.

#### E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation applies only to Federal agencies.

#### List of Subjects in 5 CFR Part 315

Administrative practice and procedure, Government employees, Handicapped, Veterans.

U.S. Office of Personnel Management.

Donald J. Devine,  
Director.

Accordingly, OPM is amending 5 CFR Part 315 by revising § 315.907 to read as follows:

#### PART 315—CAREER AND CAREER- CONDITIONAL EMPLOYMENT

##### § 315.907 Failure to complete the probationary period.

(a) Satisfactory completion of the prescribed probationary period is a prerequisite to continued service in the position. An employee who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period is entitled to be assigned, except as provided in paragraph (b) of this section, to a position in the agency of no lower grade and pay than the one the employee left to accept the supervisory or managerial position.

(b) A nonsupervisory or nonmanagerial employee who is demoted into a position in which probation under § 315.904 is required and who, for reasons of supervisory or managerial performance, does not satisfactorily complete the probationary period is entitled to be assigned to a position at the same grade and pay as the position in which he or she was

servicing probation. The employee is eligible for repromotion in accordance with Federal Personnel Manual Chapter 335, Promotion and Internal Placement.

(c) The agency must notify the employee in writing that he or she is being assigned in accordance with this section.

(5 U.S.C. 3321)

[FR Doc. 84-26486 Filed 10-4-84; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 910

[Lemon Reg. 484]

#### 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 230,000 cartons during the period October 7-13, 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:** October 7, 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 October 2,

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 91—[AMENDED]

Section 910.784 is added as follows:

#### § 910.784 Lemon Regulation 484.

The quantity of lemons grown in California and Arizona which may be handled during the period October 7, 1984, through October 13, 1984, is established at 230,000 cartons.

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

Dated: October 3, 1984.

Thomas R. Clark,

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

[FR Doc. 84-26649 Filed 10-4-84; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 84-CE-30-AD; Amendment 39-4931]

#### Airworthiness Directives; Beech Models A36TC and B36TC Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), AD

84-08-04, applicable to Beech Models A36TC and B36TC airplanes and codifies the corresponding emergency AD letter dated April 25, 1984, into the Federal Register. This AD requires modification or replacement of the Beech P/N 101-389011-55 check valve, if installed, within 25 hours time-in-service and repetitive inspections until this action is accomplished. Loss of lubrication and engine failure has occurred due to blockage of this valve. The required action will preclude the valve blockage.

**EFFECTIVE DATE:** October 15, 1984, to all persons except those to whom it has already been made effective by priority letter from the FAA dated April 25, 1984.

**Compliance:** As prescribed in the body of the AD.

**ADDRESSES:** Beechcraft Mandatory Service Bulletin 2027 applicable to this AD may be obtained from Beech Aircraft Corporation, Wichita, Kansas 67201. A copy of the information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Jack Pearson, ACE-140W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4427.

#### SUPPLEMENTARY INFORMATION:

Instances have been reported of engine damage and power loss on a Beech Model 36TC airplane due to loss of lubrication because the engine oil was forced overboard through the turbocharger impeller shaft seal and exhaust pipe. This was caused by blockage of the Beech P/N 101-389011-55 check valve end cap by carbon. The airplane manufacturer has made available an improved P/N 101-389011-69 check valve assembly not subject to this blockage for replacement of the P/N 101-389011-55 check valve assembly and instructions for modification of the P/N 101-389011-55 check valve to the P/N 101-389011-69 configuration. Instructions are also given for interim repetitive inspections to be accomplished until the check valve is modified/replaced.

The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design, thereby necessitating the AD. It was also determined that an emergency condition existed, that immediate corresponding action was required and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA

notified all known registered owners of the airplanes affected by this AD by priority mail letter dated April 25, 1984. The AD became effective immediately as to these individuals upon receipt of that letter and is identified as AD 84-08-04. Since the unsafe condition described therein may still exist on other Beech Models A36TC and B36TC airplanes, the AD is being published in the Federal Register as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the letter of notification. Because a situation still exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption ADDRESSES at the location identified.

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

Aviation safety, Aircraft.

#### Adoption of the Amendment

#### PART 39—[AMENDED]

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

**Beech:** Applies to Model A36TC (S/Ns EA-1 thru EA-241 (Modified in accordance with Beech Service Instructions No. 1191), and EA-243 thru EA-272), and Model B36TC (S/Ns EA-242, EA-273 thru EA-382, EA-384 thru EA-396, EA-398 thru EA-404, EA-406 thru EA-409, EA-411 thru EA-415 and EA-418) airplanes certificated in any category.

**Compliance:** Required as indicated, unless already accomplished. To prevent loss of engine oil due to blockage of the turbocharger

oil return line check valve, accomplish the following:

(a) Prior to further flight after the effective date of this AD:

(1) Inspect the turbocharger oil return line check valve per Beechcraft Service Bulletin No. 2027 to determine if a P/N 101-389011-55 check valve is installed. This valve may be identified by the blue color and the P/N on the valve outlet end fitting.

(i) If a Beech P/N 101-389011-55 check valve is not installed, the airplane may be returned to service without further action.

(ii) If a Beech P/N 101-389011-55 check valve is installed, prior to return to service and within each additional, five hours time-in-service until replaced, inspect and clean this valve in accordance with Beech service Bulletin No. 2027.

(b) Within the next 25 hours time-in-service after the effective date of this AD on airplanes on which a Beech P/N 101-389011-55 check valve is installed, modify this part to, or replace it with, a Beech P/N 101-389011-69 check valve in accordance with Beech Service Bulletin No. 2027.

(c) The repetitive inspections in paragraph (a)(ii) are not required when a Beech P/N 101-389011-69 check valve is installed.

(d) An equivalent method of compliance with the AD may be used if approved by the Manager, Wichita Aircraft Certification Office, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

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

This amendment becomes effective on October 15, 1984, to all persons except those to whom it has already been made effective by priority letter from the FAA dated April 25, 1984, and is identified as AD 84-08-04.

Issued in Kansas City, Missouri, on September 28, 1984.

Murray E. Smith,  
Director, Central Region.

[FR Doc. 84-26434 Filed 10-4-84; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 84-CE-23-AD; Amendment 39-4929]

#### Airworthiness Directives; DeHavilland Models DHC-2 MK I, (L-20A, YL-20, U-6 and U-6A) MK II Beaver, and MK III Turbo Beaver Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD) applicable to DeHavilland Models DHC-2 MK I (L-20A, YL-20, U-6 and U-

6A) MK II and MK III series airplanes which supersedes AD 83-05-03. It continues in effect inspection and replacement requirements of AD 83-05-03 and incorporates requirements for a specific DHC-2, MK II, S/N 80 airplane currently under Canadian registry, but eligible for import into the United States. After AD 83-05-03 was issued the FAA became aware that instructions on the necessary action to assure the continued airworthiness of this airplane were not contained in that AD. This superseding AD corrects this inadvertent omission and makes other minor clarifying changes.

**EFFECTIVE DATE:** October 12, 1984.

**Compliance:** As prescribed in the body of the AD.

**ADDRESSES:** DeHavilland Service Bulletin (S/B) No. 2/3, reissued May 13, 1983, S/B No. 2/34, Revision A, dated May 13, 1983, and S/B No. TB/9, reissued May 14, 1982, applicable to this AD may be obtained from DeHavilland Aircraft of Canada, Limited, Downsview, Ontario, Canada M3K 1Y5. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lester Lipsius, New York Aircraft Certification Office, ANE-172, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephone No. (516) 791-6220.

**SUPPLEMENTARY INFORMATION:** The manufacturer initiated fatigue tests in 1964 and has established and published retirement times and inspection instructions, updated as the need became apparent on wing strut assemblies used on early design airplanes of the DeHavilland DHC-2 series. The FAA made compliance with these mandatory by issuing AD 71-22-01, Amendment 39-1319 (36 FR 20417). The manufacturer continued the fatigue tests with later designed components and has completed fatigue testing of three different design wing strut assemblies utilizing a complete wing with representative portions of the fuselage.

Data obtained provides a basis for more accurate prediction of the safe service lives of the wing lift strut assemblies which may be installed on the DeHavilland DHC-2 series airplanes. Also, the investigation of a 1981 accident involving a DeHavilland Model DHC-2 MK I airplane disclosed evidence of fatigue damage and failure of a wing upper lift strut fitting. Following this, the manufacturer issued

DeHavilland Service Bulletin No. 2/3 reissued May 13, 1983, and DeHavilland Service Bulletin No. 2/34, Revision A, dated May 13, 1983, recommending an accelerated retirement schedule for early design wing strut assemblies. These Service Bulletins also established a comprehensive retirement schedule covering all design wing strut assemblies on DHC-2 series airplanes used for various operations. With Service Bulletin No. TB/9, reissued May 14, 1982, all Bulletins contain the manufacturer's recommendations pertaining to wing strut assembly inspections and retirement times based on latest available data on all DeHavilland DHC-2 series wing strut assemblies. Also, the FAA has determined that for purposes of clarity, the military model designation should be added to the applicability statement. Transport Canada, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, has classified the above mentioned Service Bulletins and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Canadian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of Transport Canada combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of DeHavilland Service Bulletins No. 2/3, reissued May 13, 1983, No. 2/34, Revision A, dated May 13, 1983, and No. TB/9, reissued May 14, 1982, and the mandatory classification of these Service Bulletins by Transport Canada. Based on the foregoing, the FAA has determined that the condition addressed by DeHavilland and Transport Canada is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Also, the FAA finds that the condition described herein is an emergency that requires the immediate adoption of this regulation. Accordingly, notice and public procedure hereon are impractical and contrary to the public interest and good cause exists for making this amendment effective in less than 30 days. Therefore, an AD is being issued superseding AD 83-05-03 which

requires inspections of wing lift strut upper fittings and accelerated replacement times for certain part numbered wing lift struts on DeHavilland Models DHC-2 MK I (L-20A, YL-20, U-6 and U-6A), MK II, and MK III airplanes.

The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of the Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption ADDRESSES at the location identified.

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

Aviation safety, Aircraft.

#### Adoption of the Amendment

#### PART 39—[AMENDED]

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

**DeHavilland:** Applies to Models DHC-2 MK I (L-20A, YL-20, U-6 and U-6A), MK II (S/N 80) Beaver, and MK III Turbo Beaver series airplanes, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

**Note.**—The compliance dates specified in paragraphs (b) & (c) below were established by superseded AD 83-05-03 Amendment 39-4576, effective March 7, 1983.

To prevent failure of the wing lift strut, accomplish the following:

(a) For ex-military airplanes with wing lift strut assemblies C2W545A/C2W546A and for airplanes fitted with ex-military strut assemblies C2W545A/C2W546A, comply with paragraphs (1) and (2) below within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished within the last 400 hours time-in-service, and thereafter at intervals not to exceed 500 hours time-in-service from the last inspection.

(1) Detach each wing lift strut assembly from the attachment fitting on the wing. Ensure that each radius is smooth and blends smoothly into the lug without machine marks or nicks. Using a dye-penetrant method with

at least a 10-power glass or an FAA approved equivalent method, inspect the lift strut upper fitting for cracks with particular attention given to the 1/8-inch radius junction of the lug to the attachment flanges.

(2) If a crack, mark, or nick is found in the radius, replace the lift strut assembly before further flight with unused strut assemblies C2W1103A and C2W1104A, or with C2W1115-1 and C2W1115-2 for the MK I and MK III airplanes, and only with C2W1147 and C2W1148 strut assemblies for the MK II (S/N 80) airplane.

(b) For MK I airplanes with wing lift strut assemblies C2W545A/C2W546A, comply on or before July 15, 1983, unless already accomplished, with the requirements of the "COMPLIANCE" Section in DeHavilland Service Bulletin No. 2/34, Revision A, dated May 13, 1983.

(c) For MK I airplanes with wing lift strut assemblies C2W469A/C2W470A, C2W473A/C2W474A and C2W685A/C2W686A, comply on or before January 1, 1984, unless already accomplished, with the requirements of the "COMPLIANCE" Section in DeHavilland Service Bulletin No. 2/34, Revision A, dated May 13, 1983.

(d) For the MK II (S/N 80) airplane within 30 days after application for U.S. Registry, replace the earlier strut assemblies C2W573 and C2W574, unless already accomplished, with strut assemblies C2W1147 and C2W1148.

(e) For MK I and MK II (S/N 80) airplanes, comply as follows with the wing strut assembly retirement times in DeHavilland Service Bulletin No. 2/3, reissued May 13, 1983.

(1) For aircraft engaged in normal operations at maximum gross weight of 5100 lb., comply with paragraphs 2.1 and 2.2 of the Service Bulletin.

(2) For aircraft engaged in "special-purpose operations" at maximum gross weight of 5100 lb., comply with paragraphs 3.1 and 3.2 of the Service Bulletin.

(3) For aircraft engaged in operations at gross weight in excess of 5100 lb., comply with paragraphs 4.1, 4.2 and 4.3 of the Service Bulletin.

(f) For MK III airplanes, comply as follows with the wing strut assembly retirement times in DeHavilland Service Bulletin No. TB/9, reissued May 14, 1982.

(1) For airplanes engaged in normal operations at maximum gross weight of 5100 lb., or 5370 lb. with tip tanks full, comply with paragraphs 2.1 and 2.2 of the Service Bulletin.

(2) For airplanes engaged in "special-purpose low level operations" at maximum gross weight of 5100 lb., or 5370 lb. with tip tanks full, comply with paragraphs 3.1 and 3.2 of the Service Bulletin.

(g) Replace modified or repaired strut assemblies identified in paragraphs 5.1 and 5.2 of Service Bulletin No. 2/3, reissued May 13, 1983, in accordance with the times prescribed therein.

(h) Whenever new wing strut assemblies are installed, the following new attachment bolts must be used:

AN180C-26 or AN180-26—Bolt-strut, lower attachment  
C2W497—Bolt-strut, upper attachment.

(i) A special flight permit may be issued in accordance with FAR 21.197 to operate the airplane to a location where the requirements of this AD may be accomplished.

(j) An equivalent method of compliance with this AD may be used if approved by the Manager, New York Aircraft Certification Office, ANE-170, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephone (516) 791-6680.

This AD supersedes AD 83-05-03, Amendment 39-4576.

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

This amendment becomes effective on October 12, 1984.

Issued in Kansas City, Missouri, on September 27, 1984.

Murray E. Smith,  
Director, Central Region.

[FR Doc 84-26433 Filed 10-4-84; 8:45 am]  
BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 72-CE-2-AD; Amendment 39-4930]

#### Airworthiness Directives; Cessna Models 150, 172, 177, 182, 205, 206, 207, and 210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment revises Airworthiness Directive (AD) 72-03-03, Amendment 39-1468, applicable to certain Cessna Models 150, 172, 177, 182, 205, 206, 207, and 210 airplanes by adding an alternate means of compliance using currently available parts. The original actuator assemblies and parts required to modify these actuators are no longer available. The revision will allow the operator of these airplanes to install available new improved actuators to correct the problem addressed by the AD.

**EFFECTIVE DATE:** October 15, 1984.

Compliance: As prescribed in the body of the AD.

**ADDRESSES:** Cessna Service Letters SE70-16 dated June 12, 1970; SE72-12 dated January 21, 1972; SE72-2 (Supplement #1) dated March 24, 1972; SE72-17 dated May 5, 1972; and SE72-17 (Revision 1) dated January 12, 1973, may be obtained from Cessna Aircraft Company, Post Office Box 1521, Wichita, Kansas 67201; Telephone (316) 865-9111. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, FAA,

Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Douglas W. Haig, Aerospace Engineer, ACE-120W, FAA, Wichita Aircraft Certification Office, Room 100, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946-4409.

**SUPPLEMENTARY INFORMATION:** AD 72-03-03, Amendment 39-1468 (37 FR 12219, 12220), applicable to certain Cessna Models 150, 172, 177, 182, 205, 206, 207, and 210 airplanes requires inspections and modification of the flap actuator assembly. This AD was issued to correct a condition which caused sudden flap retractions and lack of positive operation of the flaps. At that time the manufacturer developed service kits to correct the problem and the FAA made installation of the appropriate kit mandatory by AD 72-03-03.

Subsequently the manufacturer designed new flap actuators and discontinued production of the parts in the service kits required by this AD. Thus, parts to modify and service the original actuators are no longer available. Since the installation of the improved actuators will correct the problem addressed by AD 72-03-03, it is being revised to permit the use of newer design flap actuators in lieu of parts and actuators no longer available. This will prevent the unnecessary and unintentional grounding of airplanes because of lack of parts to comply with the original AD requirements.

This amendment updates the AD by incorporating presently available corrective action that provides an equal or improved level of safety to that established by the original AD. It imposes no additional burden on any person. Therefore, notice and public procedure hereon are unnecessary, and it may be made effective in less than 30 days.

The FAA has determined that the revision will impose no additional cost on the owners of the affected airplanes. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location given under the caption **ADDRESSES**.

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

Aviation safety, Aircraft.

#### Adoption of the Amendment

#### PART 39—[AMENDED]

Accordingly and pursuant to the authority delegated to me by the Administrator, AD 72-03-03, Amendment 39-1468, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13), is revised as follows:

Revise existing paragraph (d) to read as follows:

(d) On or before January 1, 1983, modify the applicable aircraft in accordance with Cessna Service Letter SE72-2 dated January 21, 1972, and Cessna Service Letter SE72-2, Supplement 1, dated March 24, 1972, or alternatively Cessna Service Letter SE72-17 (Revision 1) dated January 12, 1973.

**Note.**—The snubbers installed on certain airplanes per Cessna Service Letter SE72-2, Supplement 1, are not required with actuators specified by Cessna Service Letter SE72-17 (Revision 1).

Add a new paragraph (f) which reads as follows:

(f) An equivalent method of compliance with the AD may be used if approved by Manager, Wichita Aircraft Certification Office, Room 100, 1801 Airport Road, Wichita, Kansas 67209, telephone (316) 946-4400.

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

This amendment becomes effective October 15, 1984.

Issued in Kansas City, Missouri, on September 28, 1984.

Murray E. Smith,  
Director, Central Region.

[FR Doc. 84-26432 Filed 10-4-84; 8:45 am]  
BILLING CODE 4910-13-M

#### 14 CFR Part 75

[Airspace Docket No. 83-AGL-30]

#### Alteration of Jet Route J-83, Spartanburg, SC and Appleton, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

**SUMMARY:** This amendment alters the description of Jet Route J-83 between Spartanburg, SC, and Appleton, OH. The alteration results in a direct route between Spartanburg and Appleton. This action eliminates a dogleg, reduces the route mileage flown by the users, and reduces controller workload associated with pilots' requests to operate direct between these points.

**DATES:** Effective date—0901 GMT, December 20, 1984. Comments must be received on or before November 19, 1984.

**ADDRESSES:** Send comments on the rule in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 83-AGL-30, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, 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) 426-8626.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments on the Rule**

Although this action is in the form of a final rule, which involves changing the description of J-83 between Spartanburg, SC, and Appleton, OH, and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

**The Rule**

The purpose of this amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is to amend the description of J-83 between Spartanburg, SC, and Appleton, OH. This action was

inadvertently omitted from the proposal and subsequent rule that extended and realigned Jet Route J-186 from Toccoa, GA, direct to Appleton, OH (Docket No. 83-ASO-42). Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the description of J-83 in order to afford users the collective benefits of the amendment of J-186 and this action. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective coincident with the next charting date.

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.

**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-83 [Amended]**

By removing "INT Spartanburg 341° and Appleton, OH, 184° radials; Appleton," and substituting "Appleton, OH;"

(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 September 28, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-26428 Filed 10-4-84; 8:45 am]

BILLING CODE 4910-13-M

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1030**

**Revision to Financial Interest Reporting Requirements**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Consumer Product Safety Commission is amending its Employee Standards of Conduct to add certain positions to the list of positions required to file statements of employment and financial interests.

**DATE:** This regulation is effective October 5, 1984.

**FOR FURTHER INFORMATION CONTACT:**

Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207. Telephone 301-492-6980.

**SUPPLEMENTARY INFORMATION:** Section 1030.611 of Title 16 of the Code of Federal Regulations specifies the positions required to submit a Confidential Statement of Employment and Financial Interests (CPSC Form 219). The statements are used to ascertain possible employee conflicts of interest. Submission of these forms by employees in positions such that their individual decisions could have an economic impact on private enterprises is mandated by Executive Order 11222 and regulations promulgated by the Office of Personnel Management.

16 CFR 1030.611(q) required submission by "All Merit Pay positions and all Contract Specialists grade 7 and above" in the Commission's Directorate for Administration. This requirement was imposed because all contract specialists, regardless of grade, have opportunities to favor personal interests in the administration of contracts. The Commission has determined that its contract professionals fall in three different job classifications, and that their minimum grade level is 5. The Commission is, therefore, amending 16 CFR 1030.611(q) to include "Contract Specialists, Purchasing Agents, and Procurement Assistants, grade 5 and above."

16 CFR 1030.611(r) required submission by "all investigative positions grade 5 and above, all other positions grade 13 and above" in the Commission's Regional Offices. The Commission has determined that there are compliance officers at grade 12 who are responsible for developing cases against violators of the Commission's laws and regulations. Their

recommendation to initiate an enforcement action are reviewed by supervisors and may be overruled, but it is not always feasible for supervisors to effectively review compliance officers' choices of violations to be pursued or their development of individual cases. The Commission is, therefore, amending 16 CFR 1030.611(r) to include "all compliance positions grade 12 and above."

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553 the Commission finds that notice and other public procedures with respect to this rule are impractical and contrary to the public interest, and good cause is found for making this rule effective immediately upon publication in the *Federal Register*. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612, and thus is exempt from the provisions of that Act.

#### List of Subjects in 16 CFR Part 1030

Government Employees, Conflict of Interest.

#### PART 1030—[AMENDED]

Accordingly, Part 1030 of Title 16 of the Code of Federal Regulations is amended as shown:

1. The authority citation for Part 1030 is as follows:

Authority: E.O. 11222, 30 FR 6469, 3 CFR 1964-1965 Comp., p. 306; 5 CFR 735.101 et seq.; Pub. L. 95-521, 92 Stat. 1824, as amended by Pub. L. 96-19, 93 Stat. 37 (5 U.S.C. App.).

2. Section 1030.611 is amended by revising paragraphs (q) and (r) to read as follows:

§ 1030.611 Positions requiring submission of statement of employment and financial interests.

(q) *Directorate for Administration*. All Merit Pay positions and all Contract Specialists, Purchasing Agents, and Procurement Assistants, grade 5 and above.

(r) *Regional Offices*. All investigative positions grade 5 and above; all compliance positions grade 12 and above; all other positions grade 13 and above.

Dated: September 27, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-26538 Filed 10-4-84; 8:45 am]

BILLING CODE 6335-01-M

#### DEPARTMENT OF ENERGY

#### Federal Energy Regulatory Commission

#### 18 CFR Parts 2, 154, 201, 270, and 271

[Docket Nos. RM83-72-000 and RM82-16-000]

#### Pipeline Production Under Section 2(21) of the Natural Gas Policy Act of 1978

Issued: August 29, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

**SUMMARY:** This document corrects unintentional omissions from the Final Rule in Docket Nos. RM83-72-000 and RM82-16-000 relating to first sales of pipeline production under the Natural Gas Policy Act of 1978. That final rule was issued on August 22, 1984, and appears in the *Federal Register* on August 27, 1984, (49 FR 33,849).

#### FOR FURTHER INFORMATION CONTACT:

Michael A. Stosser, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

**SUPPLEMENTARY INFORMATION:** The following corrections are made in FR Doc. 84-22613 appearing on page 33849 of the issue of August 27, 1984:

1. On page 33849, column two, second paragraph of the "SUMMARY" section, the word "old" in the second sentence is corrected to read "certain".

2. Footnotes 26-41 are redesignated as footnotes 27-42 respectively.

3. On page 33853, column 1, first full paragraph, the second sentence is corrected to read: "If this cost-of-service determination exceeds the otherwise applicable NGPA maximum lawful price, the Commission will examine such valuation on a case-by-case basis pursuant to the requirements of NGPA sections 104(b)(2) and 109(b)(2).<sup>26</sup>".

4. A new footnote 26 is added on page 33853, column 1, to read as follows:

<sup>26</sup> See generally, Order Terminating Rulemaking and Repealing Special Relief Regulations, 49 FR 21910 (May 23, 1984). This discussion, however, does not pertain to rate settlements previously approved by the Commission. See *infra* Section IV.C.1.

5. On page 33859, column one, in the 14th amendatory section, the regulatory text of § 270.203(b) is corrected to read as follows:

#### § 270.203 Pipeline, distributor, and affiliate production

(b) *Intracompany transfer*—(1) *First sales by interstate pipelines*. A transfer, at the wellhead, of gas produced by an interstate pipeline company's production divisional unit to its transmission divisional unit is that pipeline's first sale under the NGPA. It must be evidenced in an intracompany operating statement.

(2) *First sales by intrastate pipelines*. A transfer, at the wellhead, of gas produced by an intrastate pipeline company's production divisional unit to its transmission divisional unit is that pipeline's first sale under the NGPA.

(3) *First sales by a local distribution company*. A transfer, at the wellhead, of gas produced by a local distribution company's production unit is that company's first sale under the NGPA.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-26516 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

#### 18 CFR Parts 35, 301, and 389

[Docket No. RM84-16-000; Order No. 400]

#### Methodology for Sales of Electric Power to Bonneville Power Administration

Issued: October 1, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) approves the Bonneville Power Administration's (BPA's) new methodology for determining the average system cost (ASC) of an investor-owned utility's (IOU's) resources under the Northwest Power Act (NPA or Act). The new methodology will determine the rates at which certain utilities sell power to BPA under the power exchange program in section 5 of the NPA. The new methodology differs from the existing methodology primarily by excluding income taxes from a utility's ASC and by substituting for the return on equity the embedded cost of long-term debt.

**EFFECTIVE DATE:** This rule is effective October 1, 1984.

**FOR FURTHER INFORMATION CONTACT:** Jan Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street,

NE., Washington, D.C. 20426, (202) 357-8033.

#### SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon and Oliver G. Richard III.

#### I. Introduction

The Federal Energy Regulatory Commission (Commission) approves the Bonneville Power Administration's (BPA's) new methodology for determining the average system cost (ASC) of an investor-owned utility's (IOU's) resources under the Northwest Power Act (NPA or Act).<sup>1</sup> The new methodology will determine the rates at which certain utilities sell power to BPA under the power exchange program in section 5 of the NPA. The new methodology differs from the existing methodology primarily by excluding income taxes from a utility's ASC and by substituting for the return on equity the embedded cost of long-term debt.

#### II. Background

##### A. The Statutory Scheme

Section 5(c) of the NPA provides for a power exchange program which is designed to make the benefit of BPA's relatively low preference power rates available to residential customers of IOUs in the Pacific Northwest.<sup>2</sup> When the NPA was passed, there was a shortage of BPA power, which had forced BPA not to sell power to the IOUs. This led to large disparities between the rates paid by the IOUs' residential customers and the residential customers of publicly-owned utilities in the region. Because the amount of inexpensive power that BPA can produce could not be increased, Congress provided for an "exchange" of power between the IOUs and BPA.

Under the exchange program, an IOU may sell power to BPA at the ASC of the utility's resources. BPA then sells the same amount of power to the utility at BPA's preference rate, which is generally lower. The power "exchange" in section 5(c) is generally a paper transaction; BPA makes a payment to the IOU for the difference between the IOU's ASC and BPA's preference rate. The IOUs must pass this benefit on to their customers. Thus, the ASC-based rate, compared to BPA's preference rate, determines the level at which the residential customers participate in the sharing of the low-cost Federal power. BPA's direct service industrial customers (DSIs), including large

aluminum companies, pay the entire cost of this subsidy through its BPA rates, until July 1, 1985. After that time, some of this cost will also be apportioned among other BPA customers.

The NPA does not define ASC. It does expressly require, however, that the methodology for determining ASC must exclude the cost of additional resources to serve a utility's new large single load or to meet new loads outside the region and the cost of generating facilities which are terminated before beginning to operate. (NPA section 5(c)(7) (A), (B), and (C)).

The Commission's role in this exchange program is two fold. First, under section 5(c)(7) of the NPA, BPA must develop a methodology for determining a utility's ASC (after consulting with various affected groups). The Commission must "review and approve" the methodology. Neither the statute nor its legislative history explains the nature of this review.

The Commission's second role in the exchange program arises from its Federal Power Act (FPA)<sup>3</sup> responsibility to review the wholesale rates of individual IOUs. The Commission must review the rates for such sales from the IOUs to BPA which are based on the ASC methodology. The Commission's existing rules (18 CFR 35.30 and 35.31 (1983)) state that the Commission will approve under the FPA any sale to BPA that is based on correct application of an approved methodology.

BPA has discerned problems with the methodology that the Commission previously approved. In order to revise the methodology, BPA began consultation procedures for changing the ASC methodology last autumn. It instituted rulemaking procedures and formulated a new methodology after providing for considerable public participation. BPA submitted the new methodology to the Commission on June 5, 1984, with a request for interim approval by July 1, 1984.<sup>4</sup> Although the Commission decided not to grant interim approval, it gathered and analyzed public comment on the merits of the new methodology and began its review of the Administrator's Record of Decision.<sup>5</sup>

<sup>3</sup> Federal Power Act, 16 U.S.C. 792-828c (1982).

<sup>4</sup> On June 8, 1984, the Commission issued a Notice of Proposed Interim Rule and Notice of Proposed Rulemaking which proposed interim approval of the new methodology, effective July 1, 1984, and solicited public comments on whether BPA's reasons for requesting such an interim rule were adequate. 49 FR 24146 (June 12, 1984). This notice also proposed to issue a final rule at a later date after giving the public more time to comment on the substance of the new methodology.

<sup>5</sup> The Commission requested comments by July 16, 1984, on whether it should approve the

#### B. Description of Methodology Approved in This Rule

The new methodology is similar to the old methodology in many respects. The most controversial differences are the use of the IOUs' weighted cost of long-term debt securities rather than a return on equity to determine a return component of ASC and the exclusion of State and Federal income taxes. Other significant differences are as follows.

First, the new methodology retains the "jurisdictional approach" under which retail rate orders of regulatory agencies are used as the primary source of data for computing the ASC for IOUs participating in the exchange. However, BPA will independently determine the validity of all data submitted in ASC filings. Second, the new methodology includes current transmission costs in the calculation of ASC, with a review of all future transmission plant additions to ensure that they are not redundant of the existing transmission grid. Third, the new methodology excludes all construction work in progress from the calculation of ASC. Fourth, the new methodology simplifies procedures for functionalizing costs between subsidized generation and transmission accounts and unsubsidized distribution and "other" accounts.

The new methodology will also be "phased in" in order to minimize the retail rate effects of the change. Under the phase-in procedure, from the effective date of this rule the actual ASC subsidy for each participating utility will be the average of the ASC in effect on July 1, 1984, and the ASC which would result from applying the new methodology. On July 1, 1985, the new methodology will become the exclusive means of determining the ASC of each IOU.

The material BPA submitted to the Commission also contained provisions governing when BPA can propose any further changes to the methodology and the timetable for BPA's review of ASC

methodology. BPA did not file substantive comments until July 30, 1984. It also informed interested persons of the need to utilize the Commission's protests and intervention procedures in order to be heard. 49 FR 25208 (June 19, 1984). The Commission regards all persons commenting in this proceeding equally. Intervention is unnecessary in rulemakings. Also, in the interest of fairness and completeness, it has determined to consider both BPA's late comment and the subsequent response by the IOUs.

The Commission received from the Pacific Northwest Generating Company and the DSIs petitions for rehearing of its decision not to grant interim approval. These requests, and the objections to them submitted by the Pacific Power and Light Company, are obviated by this order. The Commission does not need to consider their merits any further.

<sup>1</sup> Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839-839h (1982).

<sup>2</sup> H.R. Rep. No. 976, 96th Cong., 2d Sess. 35 (1980).

forms submitted to it by utilities. These provisions are not contained in this rule. As explained in the Commission's rule approving the old methodology, the NPA empowers the Commission to review the methodology itself, not BPA's related procedures. 48 FR 46,971 (October 17, 1983).

The material BPA submitted to the Commission includes a requirement that the IOUs submit ASC forms based on the new methodology within 20 days after the methodology is approved by the Commission. If an IOU files late, its ASC is deemed zero until it files. The Commission is giving effect to this enforcement mechanism. The ASC methodology is a formula rate and any change that does not conform to the approved methodology within a reasonable time cannot be considered just and reasonable. The Commission will deter to the Administrator's procedures to implement the transition to the new methodology.

### III. Major Issues

#### A. Commission Review in Light of Deference Due BPA

In its rule approving the existing methodology, the Commission discussed the nature of its review of the ASC methodology:

The Commission's role of reviewing the actual ASC methodology under section 5(c)(7) of the Northwest Power Act is limited in nature. It is BPA's responsibility to formulate the methodology in the first instance \* \* \*. The Commission reviews and approves or disapproves the methodology proposed by BPA \* \* \* it appears that Congress intended for the Commission to disapprove the methodology only if the Commission determines that the methodology is inconsistent with the Northwest Power Act. Under this view, disapproval is not warranted only on the basis that there are some areas in which the Commission believes the methodology could be improved \* \* \*.

Thus, if the methodology is based on a reasonable interpretation of the NPA, the Commission should approve it, even if it is not the interpretation that the Commission itself would have adopted. This is similar to the kind of deference courts afford to statutory interpretations by agencies entrusted with administration of a statute.

The Supreme Court has made it clear that BPA is generally entitled to considerable deference both for its interpretations of the NPA and its policy judgments under the NPA. In *Aluminum Co. of America v. Central Lincoln Peoples' Utility District, et al.*, 104 S. Ct. 2472, 2480-2483 (1984), the Court noted

that the interpretation of the NPA by the agency charged with administering the statute, BPA is entitled to substantial deference and should be upheld if it is reasonable, even if it is not the interpretation that the court would have reached if the question had arisen in the first instance in Court.<sup>7</sup> The Court held that BPA is particularly entitled to deference because of the complexity of the NPA and BPA's involvement in its drafting. Although BPA's interpretation in the *Central Lincoln* case was a contemporaneous construction, which is not the case with the new methodology, the Court's decision is particularly apt for the Commission's decision here.

The commenters present a variety of theories concerning the nature of the deference the Commission should accord BPA. The IOUs argue that the Commission should not rubber-stamp the methodology. This general principle is undoubtedly correct; the Commission would not approve the methodology if it were based on an unreasonable interpretation of the statute, if it were inconsistent with a correct interpretation, or if it represented policy decisions that are clearly contrary to the NPA.

The Commission recognizes, as several commenters point out, that its expertise in setting wholesale power rates makes its appellate review responsibilities in this case somewhat different than what might be expected from a court. While the NPA no doubt contemplates use of that expertise here, the Commission is not reviewing a traditional Federal Power Act rate in this instance. The residential exchange program established under the NPA is a unique ratemaking scheme. Congress did not invoke the standards of ratemaking that the Commission customarily applies. In fact, it appears to have allowed the BPA Administrator greater flexibility to accomplish the objectives of the statute than any similar scheme with which the Commission is familiar.

Contrary to the inferences drawn by some commenters, ASC-based rates are not traditional FPA rates, even though the Commission will review them under the FPA. There are, consequently, serious questions about how searching the Commission's review can be, legally. The courts have made it clear that an

<sup>7</sup> The Commission is guided by a similar principle of deference to an administering agency in other contexts as well. *Power Authority of the State of New York, et al. v. FERC*, No. 83-4051 (2d Cir. Aug. 15, 1984); See also *Connecticut Fund for the Environment v. EPA*, 696 F.2d 169, 173 (2d Cir. 1982); *EPA v. National Crushed Stone Association*, 449 U.S. 64, 83 (1980); *Udall v. Tallman*, 380 U.S. 1, 16 (1965).

agency is entitled to change its legal interpretation and its policy judgments as long as it recognizes and explains that change.<sup>8</sup>

BPA's first ASC methodology, which the Commission approved on an interim basis in 1981, addressed several issues of first impression under the NPA. It therefore provided for later amendments to accommodate experience under section 5. Its decision in this case, if reasonable under the NPA, should be treated by the Commission just as its first decision implementing section 5. If anything, BPA's three-year experience with the regional economics of the exchange program should improve its ability to fulfill the legislative purposes of the NPA. The Commission believes that even if BPA's new methodology constitutes, as commenters claim, an abrupt change from the previous methodology, the Administrator is entitled to no less deference. He is administering a complex program that involves a sensitive balancing of several regional economic interests.

On the other side, BPA argues that the only standard the Commission may apply in reviewing the methodology is ensuring that the three items the NPA specifically says must be excluded<sup>9</sup> are actually excluded. The Commission finds this interpretation of its responsibility under the NPA contrary to the statute and otherwise illogical. The three specific exclusions identified by BPA are not the only standards suggested by the NPA. First among the NPA requirements, the methodology must establish rates under section 5 that are based on the "average system cost" of each IOU's "resources". The NPA does not relieve the Commission from ensuring that this directive is followed by BPA in every case. Moreover, Commission review under BPA's suggested standard would allow BPA to set the ASC at zero permanently and still expect Commission approval on the basis that the costs listed in section 5(c)(7) would be excluded.

In sum, the Commission sees no reason to abandon the view it adopted when it approved the existing methodology. While the Commission must reach an independent judgment as to whether the methodology is based on a reasonable interpretation of the NPA, BPA is owed considerable deference for

<sup>8</sup> *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*, 103 S. Ct. 2856 (1983).

<sup>9</sup> Under section 5(c)(7), the methodology cannot include: (1) The cost of resources to serve new large single loads, (2) the cost of resources to serve loads outside the region occurring after the NPA, or (3) terminated plant costs.

<sup>4</sup> 48 FR 46970-46971 (October 17, 1984).

its interpretations of the NPA and any reasonable policy choices under that Act.

As discussed in this order, the Commission does not necessarily agree with all features of the methodology or BPA's arguments supporting them. BPA advances alternative arguments, some that are strong and some that are not. The Commission is nevertheless approving the methodology because it conforms to the provisions of the NPA. The Commission finds no compelling basis in the comments for arriving at a different result.

#### *B. Whether ASC Determination Is Traditional Cost-Based Ratemaking*

Numerous commenters argue that the new ASC methodology is contrary to the NPA because it violates basic principles of traditional FPA cost-based ratemaking. These commenters focus particularly on the BPA's substitution in the ASC of the cost of long-term debt for a return on equity and on the exclusion of income taxes from the methodology. In traditional cost-based ratemaking terms, these elements of the methodology are unconventional. The Commission's examination of the statute does not reveal any requirement that ASC-based rates must reflect a specific range of costs. Nor does it require the kind of cost treatment familiar to the Commission under its primary jurisdictional statutes.

Section 5(c) of the NPA provides only that a utility may sell power to BPA at "the average system cost of that utility's resources in each year" (section 5(c)(1)) and that the ASC "shall be determined by the Administrator on the basis of a methodology developed for this purpose in consultation with the [Pacific Northwest Electric Power and Planning] Council, the Administrator's customers, and appropriate State regulatory bodies in the region \* \* \* (section 5(c)(7)). The legislative history states that Congress intended to allow the IOUs' residential customers to:

Share in the economic benefits of the lower-cost Federal resources marketed by BPA [the Act] will provide these consumers *wholesale rate parity* with residential consumers of preference utilities in the region.<sup>10</sup>

In other words, by establishing the exchange program, the Congress was addressing the gross disparity between the rates paid by residential customers of the IOUs and those paid by the residential customers of the preference utilities. That disparity arose because

BPA could not sell its preference rate power to the IOUs. There is little else in the NPA or its history to guide the Commission with respect to the propriety of the BPA ratemaking approach. What is clear is that BPA alone is authorized to determine average system cost.

In his decision, the Administrator states that:

The Act did not necessarily contemplate subsidizing all costs that result in rate disparity between public and private utilities. Rather, it assumes the differences inherent in the different forms of business organization will remain.<sup>11</sup>

BPA argues that, if BPA rather than the customers of the IOUs were to pay for the IOUs return on equity the costs associated with income taxes by means of the exchange program the customers of the IOUs would benefit disproportionately from the exchange program. Basic differences between the profit-making, tax-paying IOUs and the publicly-owned utilities that now receive preference power were not intended by Congress to be eradicated by the ASC methodology, claims BPA.

The sharing of preference power loosely referred to by commenters as providing "wholesale rate parity" in accord with the legislative history, was recognized by this Commission as the basic goal behind section 5(c).<sup>12</sup> While no commenter seriously disputes this conclusion, it is not clear what "wholesale rate parity" means. BPA states that it "simply means that the wholesale rate used for BPA's paper sales under the exchange program is to be the same rate used for actual sales to BPA preference customers." IOUs contend that "wholesale rate parity" means that the ASC "must contain all other wholesale power cost items" except those excluded under sections 5(c)(7) (A), (B) and (C). This approach would require BPA to recognize in the ASC all but the prohibited cost-of-service items. Unfortunately, these conflicting arguments do not advance the inquiry very far, considering how various regulatory commissions apply different ratemaking approaches to ascertain the cost of service.

Congress chose the Administrator to determine cost of utility resources. Had the Congress intended that the Administrator must follow State commission determinations of a utility's resource costs, it could have easily included this requirement in the statute or simply left the Administrator out altogether and let the State commissions develop the ASC methodology. This was

not done. The Administrator was chosen to develop a methodology to determine ASC, subject only to this Commission's review. Therefore, the IOUs cannot logically maintain that the ASC must exactly equal the retail rates set by the State commissions, minus distribution costs and the costs specifically excluded under sections 5(c)(7) (A) and (B) and (C).

The Commission finds that BPA reasonably construes the NPA not to require payment of every cost that an IOU incurs. The Commission finds tenable BPA's argument that Congress did not intend to place IOU customers and the customers of publicly-owned utilities on precisely the same ground by eliminating every financial difference between the IOUs and the publicly-owned utilities. The Congress sought to make BPA's relatively cheap power available to everyone in the region. It did so by providing a mechanism that eliminated BPA's previous shortage of preference power by means of IOU power sales back to BPA at ASC-based rates. This subsidy scheme does not necessarily require that IOU customers be able to obtain cost benefits that are predicated on absorption by BPA, and subsequently the DSIs or other BPA customers, of costs that IOUs incur by virtue of their for-profit status, particularly taxes.

Payment of tax expenses and a return on equity is a necessary incident of purchasing power from an IOU. There is, in the Commission's opinion, nothing in the vague notion of "wholesale rate parity" that is necessarily designed to eliminate this characteristic of IOUs as it affects the exchange program.<sup>13</sup> In the absence of legislative directives to the contrary, the Commission believes the Administrator must make the benefits of BPA preference power widely available, as appropriate, in light of the need to balance all the interests in the region, including those of the ultimate bill-payers. BPA has a fundamental responsibility to ensure that the program will be self-supporting, viable, and equitable for *all* parties affected. The Commission cannot substitute its judgment on such issues.

BPA makes several additional arguments above to support its proposal to exclude State and Federal income

<sup>10</sup> The language of NPA section 5(c) appears to contradict the view that there is a necessary relationship between the amount of the subsidy received by IOUs and the achievement of "wholesale rate parity." Under that section BPA may sell power to a participating utility but it need not purchase back power from the utility if BPA can buy replacement power less expensively from other sources. In this event, BPA provides *no subsidy*, yet it engages in a section 5 exchange transaction.

<sup>11</sup> H.R. Rep. No. 976, 96th Cong., 2d Sess. 35 (1980) [emphasis added]. See also S. Rep. No. 272, 96th Cong., 1st Sess. 27-28 (1979).

<sup>12</sup> BPA Record of Decision at 60.

<sup>13</sup> 48 FR 46970 (Oct. 17, 1983).

taxes from ASC and use the weighted cost of long-term debt instead of a return on equity as the rate of return. BPA contends its use of the long-term debt cost surrogate effectively excludes terminated plant costs that surreptitiously tended to inflate the equity returns granted by state regulators. The Act specifically excludes terminated plant cost from ASC. BPA has determined how best to guard against undetectable violation of this legislative directive. The Commission nevertheless has reservations, from a ratemaking perspective. Long-term debt costs are almost always lower than equity costs and they may not be entirely appropriate as proxies for the cost of equity.

The Commission finds that BPA's approach does not violate the NPA, however. Its justification for using a substitute for equity costs is reasonable, particularly because it is designed to obtain strict compliance with the Act. The Commission will therefore defer to BPA on this issue. The Commission nevertheless finds unpersuasive BPA's other argument in support of a substitution for an equity return, that the exchange program eliminates the risk of default by residential and small farm ratepayers. That risk is never significant.

BPA's rationale for excluding income taxes from ASC hinges primarily on its concern that IOU's tax expenses not be spread among BPA's regional customers. IOUs believe that wholesale rate parity requires payment of all IOU costs, including taxes. State and Federal income taxes are a necessary cost of producing power, they point out. Citing the three specific exclusions in section 5(c)(7), the companies argue that, since income taxes are not one of the items excluded, they must be included.

Once again, although the Commission finds both that the IOUs' interpretation is plausible and that BPA's decision to allow a proxy for equity return while disallowing taxes on such profits is somewhat contradictory, it believes that disapproval of the new methodology would be justified only if the exclusions were totally unsupported under the statute. The Commission is not persuaded that any limitation on BPA's discretion to exclude or include specific IOU costs can be inferred from the exclusions of section 5(c)(7). Because it perceives no discernible contravention of the letter or spirit of the NPA, the Commission is therefore approving the methodology.

#### IV. Other Issues

##### 1. BPA's Authority To Initiate Procedures To Change Methodology

The IOUs contend that their contracts with BPA prohibit BPA from proposing any change in the ASC methodology until one year after final Commission approval of the methodology.<sup>14</sup> BPA began the consultation process for the pending revisions on October 7, 1983. This allegedly breaches this provision and therefore violates the *Mobile-Sierra* doctrine, under which "[r]ate filings consistent with contractual agreements are valid; rate filings inconsistent with contractual obligations are invalid."<sup>15</sup> This principle was violated, say the IOUs, because BPA undertook to revise the methodology less than one year after "final" Commission action on the existing methodology. This supposedly illegal action by BPA also prevented adequate assessment of the operation of the existing methodology, state these commenters.

BPA makes several contrary arguments about the applicability of this doctrine to this case. BPA points out that these are government, not private, contracts, that the NPA, not the FPA, governs in this instance, that there is no unilateral attempt by a utility to change existing rates because BPA is not a utility for FPA purposes, and that the methodology is a means of computing a subsidy level, not a rate. Finally, BPA points out that the consultation process began more than two years after the Commission's interim approval of the existing methodology.

As with other FPA concepts, the Commission believes that the *Sierra-Mobile* doctrine fits uncomfortably in these circumstances. In the final analysis, the Commission must conclude that the contract language at issue is not reviewable by this Commission. The Commission therefore yields to BPA's interpretation on this matter. The Commission has stated that, under section 5, it can review only the methodology.<sup>16</sup> Even if the Commission

<sup>14</sup> The methodology states that BPA may initiate procedures to change the methodology no sooner than "one year after the immediately previous ASC methodology has been adopted by Bonneville and approved by the FERC." Section 12 of the contracts makes this language "a part of this contract." Each contract is on file with Commission as a rate schedule.

<sup>15</sup> *Public Service Co. of New Mexico v. FPC*, 557 F.2d 227, 229 (10th Cir. 1977), citing *Richmond Power and Light Co. v. FPC*, 481 F.2d 490, 493 (D.C. Cir. 1973), cert. denied, 414 U.S. 1068 (1973). See generally, *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

<sup>16</sup> 48 FR 46970 (October 17, 1984).

were to find that it has authority to interpret the provision, "[a]n agency's interpretation of its own regulation is controlling unless plainly erroneous or inconsistent,"<sup>17</sup> whether or not a regulation is incorporated by reference into a contract.

##### 2. Allegations of Bias

Several commenters allege that the Administrator of BPA predetermined the outcome of BPA's rulemaking. These commenters suggest that, as a result of this bias, the Commission should subject the methodology to a higher degree of scrutiny.

The Commission recognizes that the Administrator's decision is controversial. The nature of the public interests involved requires that the Administrator deal fairly with all parties and comply with applicable statutory procedures. The Commission notes, however, that section 5 of the NPA provides for Commission review of the methodology, not the abstract fairness of BPA's decisionmaking. Whether the Administrator rendered an unfair decision is a question for the courts. The necessary demonstration of an "unalterably closed mind" on the matter<sup>18</sup> is a difficult test to meet, in any event. The Commission's function in this case is to ensure compliance with the NPA in terms of the end result achieved. Congress left the conduct of the ratemaker's art to the Administrator.

##### 3. BPA's Request for a July 1, 1984, Effective Date

As it proposed when requesting interim Commission approval,<sup>19</sup> BPA continues to request that the Commission make the revised methodology effective as of July 1, 1984. At this juncture, retroactive rulemaking would be required. Although BPA submitted several grounds for requesting a July 1, 1984, effective date, the most important reason that remains applicable is that the BPA rates to its DSI customers (rates which charge to the DSIs an amount equivalent to the subsidies paid IOUs under section 5) after July 1, 1985, will be permanently set by statute on the basis of rates in effect during the preceding 12 months. BPA has also alleged that, if the cost of the exchange program is not reduced, BPA may not be able to set reasonable rates for its power and its rates may go

<sup>17</sup> *Production Tool Corp.*, 668 F.2d 1161, 1170 (7th Cir. 1982).

<sup>18</sup> *Association of National Advertisers, Inc. v. FTC*, 627 F.2d 1151 (D.C. Cir. 1979) cert. denied, 447 U.S. 921 (1980).

<sup>19</sup> Letter of May 25, 1984, from the Administrator of BPA to the Chairman of this Commission.

so high that loads decline, jeopardizing BPA's full cost recovery.

Rulemakings such as the promulgation of the methodology generally have prospective effect only. There is no bar to retroactive rulemaking, provided that various equitable considerations are taken into account. For example, the administrative policy, in part a readjustment of the DSI floor rate, must outweigh any potential inequity. The Commission has less difficulty deciding this issue than with a related problem.<sup>20</sup> Both the permissibility and advisability of making the new methodology retroactive is complicated by the fact that the ASC rates established under it are subject to Commission review under section 205 of the FPA.

The Commission has generally construed very narrowly its authority to engage in retroactive ratemaking under the FPA.<sup>21</sup> It is unclear whether the Commission may exercise more discretion to put rates into effect retroactively under the NPA than the FPA but, if it may not, there is little to be accomplished by making the methodology, under which the rates are set, retroactive. If the Commission were to allow the rates to be retroactively effective, the result would be to reduce the rates paid by BPA since July 1 for purchases of power from the IOUs. As a result, participating IOUs might owe refunds of some of their subsidies. State law or regulatory policy, however, may prohibit the IOUs from recovering these refunds from retail customers.

BPA wishes to reduce the cost of the exchange program so as to ensure that its own customers' rates remain reasonable and their demand for power does not decline. The Commission searches the record in vain, however, for data that shows the impact of the methodology on the DSI floor rate or the size of the contribution that a July 1, 1984, effective date would make to BPA's cost recovery. These factors incline the Commission to regard the retroactive effective date as relatively inconsequential, in addition to posing a potentially troublesome cost-recovery problem for the IOUs.

In light of these considerations, the Commission will approve the new methodology prospectively only. The actual delay that might affect DSI floor rates will, in any event, be only about three months.

<sup>20</sup> See *Retail, Wholesale and Department Store Union v. NLRB*, 446 F.2d 380, 390 (D.C. Cir. 1972) and *SEC v. Chenery*, 332 U.S. 194, 203 (1947).

<sup>21</sup> See generally, *City of Piqua, Ohio v. FERC*, 610 F.2d 950 (D.C. Cir. 1979).

#### 4. Procedural Issues

The NPA requires that the methodology be developed in consultation with affected groups. It does not specify what form this consultation should take, however. Several commenters argue that the consultation that took place differed from the bilateral negotiations used to formulate the original methodology and that the notice and comment procedures used were inadequate to qualify as a consultation.

This issue also relates to the adequacy of the BPA procedures used to formulate the methodology and not the adequacy of the methodology itself. It appears to the Commission that all affected parties had an opportunity to confer with the Administrator, make their views known, and to try to affect the nature of the methodology that was developed. This Commission will nevertheless avoid looking beyond the methodology itself to ascertain whether any procedural inequities occurred. The parties to the BPA proceedings are far from dependent on this Commission to raise or rectify fundamental problems of fairness.

Several commenters contend that the new methodology must or should be reviewed by a joint state board under section 9(g) of the NPA. The commenters argue that the legislative history requires the Commission to convene a joint state board to review, not only rates, but the methodology as well.<sup>22</sup>

The Commission need not convene a joint state board to review the new methodology under section 9(g). The Commission must convene a joint state board when reviewing sales of power to BPA by an IOU. The history of section 9(g), in which the joint state board is established, refers specifically to the Commission's review of individual IOUs' rates for sales to BPA, not the methodology. If Congress intended to mandate that a joint state board review each methodology, it could have done so by statutory directive, as it did in section 9(g).

The Commission could have exercised its discretion to convene a joint state board to review the new methodology. There is no compelling reason to invoke this mechanism. The methodology has been developed after almost a year of consultations, negotiations and hearings, attended by virtually the same parties that make up a joint state board. Further review by those parties would be duplicative at this point.

Many commenters, most notably the IOU's residential customers, request

<sup>22</sup> H.R. No. 979, 96th Cong., 2d Sess. 47 (Sept. 1980).

that public hearings be held because of the significant increase in rates that would result from the new methodology. Further hearings are not required under the NPA or the Administrative Procedure Act.<sup>23</sup> Moreover, there is little reason to hold further hearings. Prior to the ASC methodology being submitted to the Commission, it was subject to seven months of BPA proceedings, including on-the-record negotiating sessions and the opportunity for interested parties to present oral and written comments. The Commission has also afforded ample opportunity to submit comments on the methodology. The entities with a substantial stake in the outcome of this proceeding have submitted comments, and those requesting hearings have not explained what benefits further hearings would provide that are not provided by written comments.

#### 5. Phase-In of the New Methodology

BPA has proposed that the new methodology be phased in to cushion the IOUs' ratepayers from any sudden change. Under BPA's proposal, beginning with the effective date of this rule, the actual ASC payments BPA makes to an IOU would be "the average of the ASC in effect on July 1, 1984, and the ASC calculated under the new methodology." The new methodology would completely control ASC payments beginning July 1, 1985. BPA claims that the authority for this phase-in is inherent in its authority under section 5:

The purpose of the residential exchange subsidy is to provide rate relief to the residential customers of exchanging utilities. It would be anomalous if the Administrator were not able to consider the effects of a change in methodology on the retail ratepayers.<sup>24</sup>

On one hand, BPA believes that the phase-in provision is not part of the methodology itself and therefore not subject to the Commission's approval.<sup>25</sup> On the other hand, the DSIs, while also arguing that the phase-in is not part of the ASC methodology, state that the Commission can disapprove it without disapproving the methodology. Moreover, the DSIs believe that the phase-in is illegal because, when BPA replaces the old with the new methodology, it thereby determines that particular costs are not a proper cost of "resources" under section 5. BPA is

<sup>23</sup> Notice and comment procedures satisfy the hearing requirements of federal agency rulemakings. *United States v. Florida East Coast Ry. Co.*, 410 U.S. 224 (1973).

<sup>24</sup> BPA record at 94.

<sup>25</sup> Comments of July 30, 1984.

thereafter without authority to pay even partially for such costs, they claim.

The Commission views the phase-in as an integral feature of the methodology. The phase-in provision would govern the rates paid by BPA to the IOUs for nearly one year. It would achieve important regulatory policies that bear on both retail customers of the IOUs and the DSIs. For the phase-in to operate, the Commission must have found both the new and existing interpretations and policy decisions to be consistent with the NPA. It has, in fact, done so. By establishing a new methodology, BPA is not repudiating the existing one as contrary to the NPA. The Commission therefore perceives no reason why BPA cannot move gradually from one legally sound position to another, combining them in the interim to achieve reasonable regulatory objectives.

#### 6. BPA's Continuing Cost Review

The new methodology, provides that BPA will engage in ongoing determinations of the appropriateness of the costs and loads submitted in each IOU's ASC forms. BPA promises to pay only the ASC if it determines appropriate, unless compelled to do otherwise by the Commission or a court.

The Administrator's Record of Decision explains that such independent determinations will solve problems with State Commission determinations utilized under the existing methodology, notably the inclusion in the equity component of rates of cost that are excluded by statute from the ASC. The Administrator states that he "is responsible for ASC determination and this responsibility cannot be delegated to state regulatory officials."<sup>26</sup>

In response, the IOUs believe that this standardless provision allows BPA to act arbitrarily to exclude costs found appropriate in State regulatory proceedings. It appears that the fundamental objection of the IOUs is that BPA wishes to change the methodology on an ad hoc basis, without standards or Commission review. This, they say, violates Congress' intention that there be a methodology for determining ASC.

The Commission appreciates that the jurisdictional costing approach in both the old and revised methodologies creates difficulties for the Administrator. While these might be better resolved by adopting a different method of determining specific costs, BPA is apparently unwilling, for obvious good reasons, to engage in the extensive regulatory determinations that would

otherwise be required. On the other hand, the IOUs have legitimate concerns about this aspect of the methodology. By this provision, BPA has afforded itself greater discretion and flexibility than might be necessary to address the problem BPA anticipates.

Despite its reservations, the Commission will approve this provision, on the understanding that BPA intends to utilize this review of State-determined costs for very limited purposes, that is, to ascertain whether the NPA would be violated by the wholesale incorporation of cost information reported by the IOUs. Indeed, by using the cost of long-term debt as a substitute for equity return, BPA has already solved the major problem to which this provision might otherwise be applied. It is not the Commission's intent that the review provision be used to amend the methodology or to develop a policy inconsistent with its overall provisions. Moreover, the Commission expects that any such departure would be presented to it at the time it reviews any rate filed under the new methodology. Therefore, the Commission finds this aspect of the methodology acceptable.

#### 7. Transmission Costs

The new methodology includes the costs of transmission facilities which either: (1) Began service before July 1, 1984, or (2) are directly required to integrate resources to the transmission service grid. If an IOU constructs facilities more expensive than those needed to interconnect to the BPA system, the additional cost would not be included in the IOU's ASC.

BPA views this as a compromise because section 5 does not require BPA to pay IOUs for any transmission costs. NPA section 3(19) does not treat transmission facilities as "resources", unlike generating facilities and conservation measures. As a matter of policy, BPA would include transmission costs that "reflect integration of generating resources." BPA includes all existing transmission in service as of July 1, 1984, to avoid the difficult determination of whether existing facilities meet this test. Finally, BPA believes that inclusion of these costs will help cushion the impact that the new methodology would have on the rates of residential and small farm ratepayers.

The IOUs object to this cost treatment and claim that, because transmission is a wholesale cost, and BPA's preference rate includes transmission costs, all transmission costs must be included in ASC to achieve wholesale rate parity.

The Commission is confident that BPA has struck an equitable balance on this

issue and has not contravened the NPA by including transmission costs. Although the NPA does not speak to the subsidization of transmission costs, it appears at least as plausible to contend that Congress committed the issue to BPA discretion as it is to argue that, by its silence, Congress meant to exclude transmission costs. The Commission sees no reason to overrule the Administrator here.

#### 8. Construction Work in Progress

Several commenters contend that the exclusion of construction work in progress (CWIP) from the exchange rate defeats wholesale rate parity because BPA includes CWIP, notably for Washington Public Power Supply System plants, in its preference rate. BPA excluded CWIP to avoid the difficulty of retroactively adjusting the ASC if CWIP costs were incurred for a plant that was later terminated. Commenters claim that this was not a problem under the old methodology and that no change is therefore needed.

BPA notes, however, that the State regulatory commissions in the Pacific Northwest do not allow CWIP in rate base. Because BPA is relying on the cost data produced by these commissions for their own proceedings, the inclusion of CWIP in ASC-based rates would be inappropriate. This is a policy choice that the NPA arguably leaves to the Administrator. This Commission finds the BPA justification to be adequate.

#### 9. Time for Filing Rates With BPA

BPA submitted to the Commission a requirement that the IOUs must file rates with BPA under the new methodology within 20 days of the Commission's approval of this rule. The penalty for a utility's failure to file on time is to have its ASC deemed zero. The rates are submitted for Commission approval under the FPA after filing with BPA.

The Commission's view of this enforcement mechanism is twofold. First, the Commission believes that, as some commenters argue, 20 days may have been too little time within which to marshal the data needed for an ASC filing, if the Commission had made the new methodology effective on July 1, 1984, less than one month after BPA made it public. The affected IOUs have now had almost four months to study the methodology and begin formulating the required data, much of which is already on file with BPA. This aspect of the BPA filing requirement is therefore a reasonable means of ensuring swift implementation of the methodology. The participating IOUs must now file new

<sup>26</sup> BPA Record of Decision, at 35.

rates with BPA if a new methodology is approved (the new definition of "exchange period" provides for this). For provisions such as the phase-in, such prompt filing is necessary.

The second part of this provision—the zero ASC provision—is more troublesome. The Commission believes that the Administrator lacks authority, absent Commission approval of a rate change, to deem a utility's ASC to be zero and to rule in effect that the rate under the existing, approved methodology is thereby ended and uncollectible. A utility is entitled under the FPA to charge an approved rate only so long as it remains the effective filed rate, however. The currently effective rate for sales to BPA are FPA rates. The Commission has maintained that, just as the methodology must conform to the NPA, IOU exchange rates must conform to the Methodology. (§ 35.31(b))

In response to this difficulty, the Commission points out that, by approving BPA's changes in the methodology, it is amending the requisite structure of the IOUs' rates and thereby an essential condition under which the IOUs participate in the program. Under the NPA and FPA, participating IOUs must have rates on file that conform to the approved methodology. If participating IOUs do not file new rates to conform to the methodology, they will no longer have effective rates on file with the Commission. In light of this, the Administrator's filing provision is unnecessary as a means of enforcing compliance. It does, however, provide a suitable procedural mechanism for accomplishing this objective and the Commission therefore adopts this procedure as applies to IOU filings. In order that IOUs that file with BPA on a timely basis can be deemed to have a new effective rate on file with the Commission at the time of filing with BPA, the Commission will require from any such participating IOU a notice of timely filing. Timely filing will determine whether a participating IOU will have any rate on file between the date on which the Commission approves the methodology and the date on which the IOU files with BPA or on which its ASC is otherwise deemed zero by BPA. (§ 35.30(b)).

#### V. Summary of the Rule

Part 301 codifies BPA's ASC methodology. The Administrator's language is included here and is amended only as needed to conform to the Commission's style and format. Any IOU filing in conformance with the methodology or other interested person should be aware that the Commission is

not publishing in Part 301 several procedural provisions that relate to filing with BPA or to internal BPA procedures. Those persons should contact the Administrator for such information.

The Commission procedures that govern filing of ASC-based rates with the Commission under the FPA are found in 18 CFR 35.30. These provisions are not affected by this rule.

Section 301.1(b) sets forth the definitions related to the ASC: "average system cost," "contract system cost," "contract system load," "cost," "exchange period," "jurisdiction," "new large single load," "regional power sales customers," "test period," "state commission," "file," and "review period."

Section 301.1(c) refers participating utilities to the Administrator's procedural filing requirements for all ASC-based rates. It also states that each utility must file a completed Appendix I for each regional jurisdiction for the initial period, and for each jurisdictional rate change or commencement of a rate change proceeding. BPA shall use this filing to determine the utility's exchange rate for the applicable period.

Appendix I to Part 301 follows the rule and contains forms or schedules with explanatory footnotes that make up the ASC methodology itself. These schedules are filled out by each utility for a specific test period and for each jurisdiction in which it operates and are submitted to BPA. The four schedules of the Appendix are: Plant investment, rate base, and Rate of return; Weighted Average cost of long-term debt; Expenses; and Average system cost.

#### VI. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act (RFA)<sup>27</sup> requires certain statements, descriptions, and analyses of rules that will have "a significant economic impact on a substantial number of small entities."<sup>28</sup> The Commission is not required to make an RFA analysis if it certifies that the rule will not have such an impact.<sup>29</sup>

The investor-owned utilities which are participating in the exchange program are not small entities.<sup>30</sup> Moreover, the

number of utilities participating in the exchange is not substantial. Only nine utilities whose rates are under this Commission's jurisdiction are participating in the exchange program.

For these reasons, the Commission certifies under the RFA that this rule will not have a significant economic effect on a substantial number of small entities.

#### VII. Effective Date

The Commission finds good cause under section 553(d)(3) of the APA to make this rule effective immediately, rather than 30 days after publication. The long-term impact on the rates of the DSIs of delaying early implementation of the new methodology justifies immediate effectiveness. This long-term impact arises from section 7(c)(2) of the NPA, which provides that beginning in July 1, 1985, BPA's rates to the DSIs shall not be less than the rates in effect for the preceding contract year.

This rule is effective October 1, 1984. Pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. Part 35 (1982), the information collection requirements of this rule have been approved by the Office of Management and Budget under OMB Control No. 19020096. Part 389 of the Commission's regulations is accordingly amended to include this control number in the Commission's list of control numbers.

#### List of Subjects

##### 18 CFR Part 35

Electric power rates, Electric utilities, Reporting requirements.

##### 18 CFR Part 301

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

##### 18 CFR Part 389

Paperwork Reduction Act, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 35, 301 and 389 of Title 18, Chapter I, *Code of Federal Regulations*, as set forth below.

By the Commission.  
Kenneth F. Plumb,  
Secretary.

#### PART 35—[AMENDED]

4. In § 35.30, paragraph (b)(2) is revised to read as follows:

##### § 35.30 General provisions.

\* \* \* \* \*  
(b) *Effectiveness of rates.* \* \* \* \* \*  
(2) Except as otherwise provided under this section, the ASC ordered by

<sup>27</sup> 5 U.S.C. 601-612 (1982).

<sup>28</sup> *Id.*, Sections 603, 604.

<sup>29</sup> *Id.*, Section 605(h).

<sup>30</sup> *Id.* Section 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632 (1982), which defines "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. See also SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to be codified at 13 CFR Part 121).

the Commission will be deemed in effect from the beginning of the relevant exchange period, as defined in § 301.1(b)(95) of this chapter. For any initial exchange period after the Commission approves a new ASC methodology, the ASC will be effective retroactively under this paragraph only if the utility files its new ASC within the time allowed under BPA procedures. Any utility that files a revised ASC with BPA in accordance with this paragraph must promptly file with the Commission a notice of timely filing of the new ASC.

(Federal Power Act, 16 U.S.C. 792-828c (1976 and Supp. IV (1980)) and Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 830-839h (Supp. IV (1980)))

#### PART 301—[AMENDED]

1. Part 301 is amended by revising paragraphs (b), (c) and (d) in § 301.1 to read as follows:

##### § 301.1 Average system cost methodology.

(a) \* \* \*

(b) *Definitions.* For purposes of this section the following definitions apply:

(1) "Average system cost" ("ASC") means for each jurisdiction and each exchange period the quotient obtained by dividing Contract System Costs by Contract System Load.

(2) "Contract System Costs" means the Utility's Costs for production and transmission resources, including power purchases and conservation measures, which Costs are includable in, jurisdictionally allocated by, and subject to the provisions of Appendix 1. Contract System Costs do not include Costs excluded from ASC by section 5(c)(7) of the Northwest Power Act.

(3) "Contract System Load" means the firm energy load used by the State Commission for the purpose of establishing retail rates, adjusted pursuant to the Average System Cost Methodology rule.

(4) "Costs" means the aggregate dollar amount or any portion of the amount allowed or relied upon by the State Commission to determine the test period revenue requirement for the Utility in a jurisdiction.

(5) "Exchange Period" means the period of time during which a Utility's jurisdictional retail rate schedules are in effect, commencing with the effective date of these schedules and ending with the effective date of new retail rate schedules in the jurisdiction; provided that no Exchange Period shall commence prior to or extend beyond the term of the Utility's Residential

Purchase and Sales Agreement. For the purposes of any initial Appendix 1 filing, the Exchange Period shall commence on the date such Appendix 1 is filed and end with the effective date of the next retail rate change.

(6) "Jurisdiction" means the service territory of the exchanging Utility within which a State Commission has authority to approve the retail rates.

(7) "New Large Single Load" means that load defined in section 3(13) of the Northwest Power Act, and as determined by BPA as specified in power sales contracts with its customers.

(8) "Regional Power Sales Customer" means any entity that contracts directly with BPA for the purchase of power delivery in the region as defined by section 3(14) of the Northwest Power Act.

(9) "Test Period" means the time period (not less than 12 months) used by the State Commission to determine Cost for retail ratemaking.

(10) "State Commission" means a State regulatory body, preference utility governing body, or other entity authorized to establish retail electric rates in a jurisdiction.

(11) "File" or "filed" means that the Appendix 1 has been:

(i) Hand delivered to the Division of Financial Requirements; Bonneville Power Administration; Portland, Oregon; or

(ii) Mailed to BPA by certified mail, return receipt requested, to the following address:

Bonneville Power Administration,  
Division of Financial Requirements,  
Routing: DN, P.O. Box 3621, Portland,  
Oregon 97208

and has been received by BPA. An Appendix 1 shall be considered to be filed as of the date of the postmark on the certified mailing.

(12) "Review Period" means that period of time during which a Utility's Appendix 1 is under review by the Administrator. The review period begins when an Appendix 1 is Filed and ends two hundred and ten (210) days after the Utility Filed its Appendix 1.

(c) *Phase-In.* For the period beginning with the effective date of this rule and ending June 30, 1985, a utility's ASC will be the average of the ASC in effect on July 1, 1984 and the ASC calculated under this section. Beginning July 1, 1985, each utility's ASC will be calculated exclusively under this section.

(d) *Filing Procedures.* The procedures established by the Administrator

provide the filing requirements for all utilities that file an Appendix 1.

(1) Appendix 1 is a form that identifies Contract System Costs and Contract System Load and permits the calculation of ASC.

(2) For each Exchange Period and for each regional Jurisdiction in which a Utility provides service, the Utility shall complete and file three copies of Appendix 1, in accordance with the Administrator's procedures and § 35.30 of this chapter.

2. Part 301 is further amended by revising Appendix I to § 301.1 to read as follows:

##### Appendix I to § 301.1—Average Systems Cost Methodology

Appendix 1 is the form on which a Utility participating in a Residential Purchase and Sale Agreement shall report its Contract System Costs and other necessary data for the calculation of ASC.

The form consists of four schedules that shall be completed by the Utility in accord with these instructions and the provisions of the footnotes following the schedules. Any items not applicable to the Utility shall be so identified.

The schedules are as follows:

Schedule 1—Plant Investment/Rate Base/  
Rate of Return

Schedule 2—Weighted Average Cost of Long  
Term Debt

Schedule 3—Expenses

Schedule 4—Average System Cost

The filing Utility shall reference and attach workpapers that support Costs, including details of allocation and functionalization.

All references to the Commission accounts are to the Commission Uniform System of Accounts as of July 1, 1984. The Costs includable in the attached schedules are those includable by reason of the definitions in the Commission accounts. If the Commission accounts are later revised or renumbered, any changes shall be incorporated into this form by reference, except to the extent that BPA determines that a particular change results in a change in the type of Costs allowable for exchange purposes. If the Utility does not follow the Commission accounts, its filing must include a reconciliation between its accounts and the items allowed as Contract System Costs.

BPA may require the Utility to account for purchased power transactions with affiliated entities as though the affiliated entities were owned in whole or in part by the Utility, if necessary to properly determine and/or functionalize the Utility's Costs.

A utility operating in more than one jurisdiction shall allocate its total system Costs among jurisdictions in accord with the same allocation methods and procedures used by the State Commission to establish jurisdictional Costs and resulting revenue requirements. Appendix 1 shall include details of the allocation. This allocation also

accomplishes the exclusion of the Costs of additional resources to meet loads outside the region, as required by section 5(c)(7) of

the Northwest Power Act.  
All schedule entries and supporting data shall be in accord with generally accepted

accounting principles and practices as these principles and practices apply to the electric utility industry.

APPENDIX 1

SCHEDULE 1.—BONNEVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT—AVERAGE SYSTEM COST METHODOLOGY TEST PERIOD

[Plant investment rate base/rate of return (thousands)]

Line No.	Items (1)	Total to be functionalized (2)	Functionalization		
			Production (3)	Transmission (4)	Other (5)
Production Plant:					
1	Steam production, 310-316.....				
2	Nuclear production, 320-325.....				
3	Hydraulic production 330-336.....				
4	Other production plant, 340-346.....				
5	Total production plant.....				
6	Transmission plant, 350-359 <sup>a</sup> .....				
7	Distribution plant, 360-373 <sup>b</sup> .....				
8	Intangible plant, 301-303 <sup>c</sup> .....				
9	General plant, 389-399 <sup>d</sup> .....				
10	Electric plant-in-service.....				
Less:					
11	Depreciation Reserve, 108.....				
12	Steam plant.....				
13	Nuclear plant.....				
14	Hydraulic plant.....				
15	Other plant.....				
16	Transmission plant <sup>a</sup> .....				
17	Distribution plant <sup>b</sup> .....				
18	General plant <sup>d</sup> .....				
19	Amortization reserve 111 <sup>e</sup> .....				
20	Total depreciation and amortization.....				
21	Total net plant.....				
22	Nuclear fuel 120.2-120.4 less 120.5.....				
23	Accumulated deferred debits 186 <sup>f</sup> .....				
24	Cash working capital <sup>g</sup> .....				
25	Materials and supplies 151-157, 163 <sup>h</sup> .....				
Less:					
26	Accumulated deferred investment tax credit/255 <sup>i</sup> .....				
27	Accumulated deferred income taxes/281-283 <sup>j</sup> .....				
28	Other accumulated deferred credits/253, 257-257 <sup>k</sup> .....				
29	Customer contributions and aid to construction/252 <sup>l</sup> .....				
30	Other 106, 124, various <sup>m, n</sup> .....				
31	Total rate base.....				
32	Times rate of return at _____ pct. <sup>o</sup> .....				

SCHEDULE 2.—BONNEVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT—AVERAGE SYSTEM COST METHODOLOGY, TEST PERIOD

[Weighted average cost of long-term debt]

Line No.	Items	Date of issue (1)	Date of maturity (2)	Interest rate (3)	Face amount (4)	Premium (5)	Discount (6)	Issue expense (7)	Net proceeds (8)	Interest expense (9)
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16	Weighted average cost of long-term debt.....									

SCHEDULE 3.—BONNEVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT—AVERAGE SYSTEM COST METHODOLOGY TEST PERIOD

[Expenses (thousands)]

Line No.	Items (1)	Total to be functionalized (2)	Functionalization		
			Production (3)	Transmission (4)	Other (5)
Production:					
1	Fuel, 501, 518, 547.....				
2	Purchased power, 555.....				

**SCHEDULE 3.—BONNEVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT—AVERAGE SYSTEM COST METHODOLOGY  
TEST PERIOD—Continued**

[Expenses (thousands)]

Line No.	Items  (1)	Total to be functionalized  (2)	Functionalization		
			Production  (3)	Transmission  (4)	Other  (5)
	Operations and Maintenance:				
3	Steam, 500, 502-514				
4	Nuclear, 517, 519-532				
5	Hydro, 535-545				
6	Other, 546, 548-554				
7	Total production expenses				
8	Transmission, 560-573 <sup>a</sup>				
9	Distribution, 580-598 <sup>b</sup>				
10	Customer accounting, 901-905 <sup>c</sup>				
11	Customer assistance, 907-910 <sup>d</sup>				
	Administrative and General:				
	Account No.:				
12	920				
13	921				
14	922				
15	923				
16	924				
17	925				
18	926				
19	927				
20	928				
21	929				
22	930.1				
23	930.2				
24	931				
25	932				
26	Total A and G				
27	Total operations and maintenance				
28	Depreciation and amortization, 403-407				
29	Steam production plant				
30	Nuclear production plant				
31	Hydraulic production plant				
32	Other production plant				
33	Transmission plant <sup>a</sup>				
34	Distribution plant <sup>b</sup>				
35	General plant <sup>c</sup>				
36	Amortization <sup>d</sup>				
37	Total depreciation and amortization				
38	Taxes other than income taxes 408, 409 <sup>e</sup>				
39	Federal income tax <sup>f</sup>				
40	State income tax <sup>g</sup>				
41	Other expenses <sup>h</sup>				
	LESS:				
42	Sales for resale revenue 447				
43	Other operating revenues 450-456 <sup>i</sup>				
44	Billing credits <sup>j</sup>				
45	Total operating expenses				
46	Return from schedule 1				
47	Other adjustments				
48	Total cost				

**SCHEDULE 3A.—BONNEVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT—AVERAGE SYSTEM COST METHODOLOGY  
TEST PERIOD**

[Taxes other than income taxes (thousands)]

Line No.	Items  (1)	Total to be functionalized  (2)	Functionalization		
			Production  (3)	Transmission  (4)	Other  (5)
	Federal:				
1	Insurance contributions				
2	Unemployment				
	State:				
	California:				
3	Property				
4	Unemployment				
	Oregon:				
5	Property				
6	Tri-met				
7	Lane county				
8	Unemployment				
9	Regulatory commission				
	Washington:				
10	Property				
11	Unemployment				
12	Generating tax				
13	Pollution control credit				
3a	Revenue and business				
	Idaho:				
14	Property				
	Montana:				

**SCHEDULE 3A.—BONNEVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT—AVERAGE SYSTEM COST METHODOLOGY  
TEST PERIOD—Continued**

[Taxes other than income taxes (thousands)]

Line No.	Items (1)	Total to be functionalized (2)	Functionalization		
			Production (3)	Transmission (4)	Other (5)
15	Property .....				
16	Unemployment .....				
	Wyoming:				
17	Property .....				
18	Unemployment .....				
	Utah:				
19	Property .....				
20	Local—Occupation and franchise .....				
21	In-lieu taxes .....				
22	Other .....				
23	Total .....				

Note:

- Supporting workpapers are to be attached.
- Footnotes referenced on Schedule 3 will be relied upon in determining ASC.

**SCHEDULE 3B.—BONNEVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT—AVERAGE SYSTEM COST METHODOLOGY  
TEST PERIOD**

[Other included items (thousands)]

Line No.	Items (1)	Total to be functionalized (2)	Functionalization		
			Production (3)	Transmission (4)	Other (5)
	Operating revenues:				
1	Sales for resale 447 .....				
2	1 .....				
3	2 .....				
4	Total .....				
	Other Operating Revenues 450-456:				
5	Acct. 450 .....				
6	Acct. 451 .....				
7	Acct. 452 .....				
8	Acct. 453 .....				
9	Acct. 454 .....				
10	Acct. 455 .....				
11	Acct. 456 .....				
12	Total other revenues .....				

Note:

- Supporting workpapers are to be attached.
- Footnotes referenced on Schedule 3 will be relied upon in determining ASC.

**SCHEDULE 4.—BONNEVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT—AVERAGE SYSTEM COST METHODOLOGY  
TEST PERIOD**

[Average system cost]

Line No.	Items (1)	Amounts (2)
1	Contract system costs:	
2	Production cost (from schedule 3) .....	
3	Transmission cost (from schedule 3) .....	
4	Less excluded load costs <sup>f</sup> .....	
5	Total contract system costs .....	
6	Contract system load:	
7	Total load (MWh) .....	
8	Less:	
9	Nonfirm adjustment (MWh) .....	
10	Other adjustments (MWh) .....	
11	Net load (MWh) .....	
12	Plus:	
13	Distribution losses (MWh) <sup>g</sup> .....	
14	Total net load (MWh) .....	
15	Less:	
16	Excluded load (MWh) <sup>f</sup> .....	
17	Excluded load Dist. losses (MWh) .....	
18	Total contract system load (MWh) .....	
19	Average system cost (Mills/kWh) (line 5/line 18) .....	

**Average System Cost Methodology Footnotes**

- <sup>a</sup> Transmission plant and the associated cost to be used in the calculation to the average system cost (ASC) are limited to:

(1) For transmission plant in service as of July 1, 1984, transmission plant will be as defined by the Federal Energy Regulatory Commission Uniform System of Accounts and will include radial transmission lines.

(2) For transmission plant commencing service after July 1, 1984, transmission plant costs which can be exchanged are limited to transmission that is directly required to integrate resources to the transmission system grid. Specifically, transmission costs which can be exchanged are limited to the lesser of the costs of transmission facilities required to transmit power from the generating resource to the exchanging utility's system or the sum of the costs of the transmission facilities required to integrate the generating resource to the BPA system and the wheeling costs necessary to wheel the power to the exchanging utility's system. If the utility chooses to construct facilities which are more costly than the facilities required to interconnect to the BPA system, the total costs to be exchanged shall be no greater than the facility costs that would have been incurred to interconnect with the BPA system.

<sup>b</sup> Distribution plant means all land, structures, conversion equipment, lines, line transformers, and other facilities employed between the primary source of supply (i.e., generating station, point of receipt in the case of purchased power) and of delivery to customers, which are not includable in transmission system, as defined in footnote a(1), whether or not such land, structures, and facilities are operated as part of a transmission system or as part of a distribution system. Stations that change electricity from transmission to distribution voltage shall be classified as distribution stations.

Where poles or towers support both transmission and distribution conductors, the poles, towers, anchors, guys, and rights-of-way shall be classified as transmission facilities. The conductors shall be classified as transmission or distribution facilities according to the purpose for which they are used. Land (other than rights-of-way) and structures used jointly for transmission and distribution purposes shall be classified as transmission or distribution according to their major use.

<sup>c</sup> Contract System Costs shall reflect the costs and the revenues arising from conservation and/or retail rate schedules implemented to induce conservation, and for which the utility receives billing credits. These billing credit revenues shall be functionalized on the same basis as the cost of the related conservation measures.

<sup>d</sup> The overall rate of return to be applied to a utility's Exchange Period rate base as shown in Appendix 1 shall be equal to its weighted average cost of long term debt. The utility's overall rate of return times rate base will equal the utility's return provided that if depreciation is not used for jurisdictional ratesetting, then return will be equal to the lesser of: (1) Interest expense plus depreciation, or (2) debt service and revenue financed capital expenditures. In no event will the sum of Contract System Cost and Distribution/Other costs be greater than the revenue requirement used to set rates.

<sup>e</sup> A tax-exempt utility may include in-lieu taxes up to an amount that is comparable, for each unit of government paid in-lieu taxes, with taxes that would have been paid by a nontax exempt utility to that unit of government. In no event shall the utility's regional total in column 2 be greater than the actual amount paid or the amount used to determine the total revenue requirement for the test period. In-lieu taxes shall be functionalized according to a direct analysis included with the Appendix 1 or to Distribution/Other.

<sup>f</sup> The cost of additional resources sufficient to serve any New Large Single Load that was not contracted for, or committed to, prior to September 1, 1979, is to be determined as follows:

(1) To the extent that any New Single Loads are served by dedicated resources, at the cost of those resources, including applicable transmission;

(2) In the amount that New Large Single Loads are not served by dedicated resources, at BPA's New Resources rates as established from time to time pursuant to section 7(f) of the Regional Act and as applicable to the utility, and applicable BPA transmission charges if transmission costs are excluded in the determination of BPA's New Resource rate, to the extent such costs are recovered by the utility's retail rates in the applicable jurisdiction; and

(3) To the extent that New Large Single Loads are not served by dedicated resources plus the utility's purchases at the new Resource Rate, the costs of such excess load shall be determined by multiplying the kilowatt-hours not served under subsections (1) and (2) above by the cost (annual fixed plus variable cost, including an appropriate portion of general plant, administrative and general expense and other items not directly assignable) per kilowatt-hour of all baseload resources and long term power purchases (five years or more in duration), as allowed in the regulatory jurisdiction to establish retail rates during the Exchange Period, exclusive of the following resources and purchases:

(a) Purchases at the New Resources rate pursuant to section 7(f) of the Act; (b) purchases at the Federal Base System rate, pursuant to section 5(c) of the Act; (c) resources sold to BPA, pursuant to section 6(c)(1) of the Act; (d) dedicated resources specified in footnote k(1) of this methodology; (e) resources and purchases committed to the utility's load as of September 1, 1979, under a power requirements contract or that would have been so committed had the utility entered into such a contract; and (f) experimental or demonstration units or purchases therefrom. Transmission needed to carry power from such generation resources or power purchases shall be priced at the average cost of transmission during the Exchange Period.

(4) Any kilowatt-hours of New Large Single Loads not met under subsection (1), (2), or (3) above will be assumed to be supplied from the most recently completed or acquired baseload resource(s) or long term power purchase(s), exclusive of dedicated resources and experimental or demonstration resources or purchases therefrom, that are committed to the utility's load as of September 1, 1979, under a power requirements contract. The cost of these generation resources and long-term power purchases and the transmission cost associated with these resources or purchases will be calculated as specified in subsection (3) above.

(5) If the New Large Single Load is served on any energy or capacity interruptive basis, the utility shall prepare a calculation subject to review by BPA of the fixed (if any) and variable costs of providing such service, except that the amount excluded from ASC for the New Large Single Load shall not be less than the transmission and generation cost included in the retail rate charged the New Large Single Load.

<sup>g</sup> The losses shall be the distribution energy losses occurring between the transmission portion of the utility's system and the meters measuring firm energy load. Losses shall be established according to a study (engineering, statistical and other) that is submitted to BPA by the exchanging utility subject to review by BPA. This study shall be in sufficient detail so as to accurately identify average distribution losses associated with the utility's total load, excluded loads, and the residential load. Distribution losses shall include losses associated with distribution substations, primary distribution facilities, distribution transformer, secondary distribution facilities and service drops.

<sup>h</sup> Cash Working Capital greater than 1/2 Operations and Maintenance expenses less fuel and purchased power expenses is functionalized to Distribution/Other. The remainder of Cash Working Capital shall be functionalized on the basis of Operations and Maintenance expenses less fuel and purchased power.

<sup>i</sup> Conservation costs are costs of measures or resources for which power is (or is planned to be) saved by means of physical improvements, alterations, devices, or other installations which are measurable in units. A contract charge paid pursuant to BPA's long term conservation contract will be an allowable conservation cost in Average System cost. Only conservation cost funded by the utility will be functionalized to Production in the Utility's Average System Cost. Conservation costs incurred to promote changes in consumer behavior including costs attributable to audits, brochures, advertising pamphlets, leaflets, and similar items, or required by a government entity through building code provisions or programmatic conservation costs in lieu of building code provisions, will be functionalized to Distribution/Other. Conservation surcharges imposed pursuant to section 4(f)(2) of the Northwest Power Act, or other similar surcharges or penalties imposed on a Utility for failure to meet required conservation efforts will also be functionalized to Distribution/Other. Conservation and associated costs must be generally consistent with the Regional Council's resource plan as determined by the Administrator.

**Functionalization:**

Except for those accounts that are required to be functionalized under subsection III(C) below, functionalization of each account included in the Utility's ASC shall be by either, but not both, of the following two methods:

(1) Direct analysis, or (2) according to the specific functionalization ratios applied to the various Uniform System of Accounts. These two methods are described below in subsections III(A) and III(B), respectively.

**I. Rules**

(A) If a Utility has previously functionalized an account by direct analysis as set forth in subsection III(A) below, the utility is not allowed to use the specific functionalization ratio method without prior approval from BPA.

(B) The Utility must submit with its ASC filing any and all workpapers, documents, or other materials that demonstrate that the functionalization under its direct analysis assigns costs based upon the actual and/or intended functional use of those items. Failure to submit such documentation will result in the entire account being functionalized to Distribution/Other.

(C) For Accounts 389, 390, 391 and 392 and Accounts 920, 921, 922, 930.2 and 932, the utility may functionalize these accounts using one, but not any combination, of the following functionalization methods, whichever assigns the highest cost to the Production and Transmission function:

1. Subsection III(A) described below;
2. Subsection III(B) described below; or
3. For publicly-owned and cooperative utilities that have neither generation facilities nor affiliated generation organization over which the utility exercises over half of the voting rights, 10 percent of gross plant investment may be assigned directly to Production and 10 percent of labor costs assigned to Production. The remainder of Accounts 389, 390, 391, and 392 will be functionalized using Transmission and Distribution Gross Plant Ratios excluding General Plant.

The remainder of Accounts 920, 921, 922, 930.2 and 932 will be functionalized using the Labor Ratio for Transmission and Distribution, and the balance assigned to Distribution/Other.

**II. Definitions**

For purposes of subsections III(A) and III(B) *Labor Ratios* is defined as the ratios which assign costs on a pro rata basis using salary and wage data for production, transmission, and distribution/other functions included in the Test Period costs on which Appendix 1 is based. If however, this information is unavailable, comparable data shall be used for the most recent calendar year as reported on the Federal Energy Regulatory Commission Form 1 (at page 355), or similar document for those utilities not required to file Federal Energy Regulatory Commission Form 1.

**III. Functionalization Methods**

(A) By direct analysis which assigns costs to either the production, transmission, or

distribution function of the utility. Such analysis is subject to BPA review and approval.

(B) According to the following specific functionalization methods:

*Account and Functionalization Method***1. Rate Base Accounts:**

- 310-373 (Plant in Service)—Functionalize directly according to the Federal Energy Regulatory Commission System of Accounts.
- 389 (Land and Land Rights)—Functionalize on the ratios of Production, Transmission and Distribution Gross Plant excluding General Plant.
- 390 (Structures and Improvements)—Functionalize on the ratios of Production, Transmission and Distribution Gross Plant excluding General Plant.
- 391 (Office Furniture and Equipment)—Labor ratios.
- 392 (Transportation Equipment)—Functionalize on the ratio of Transmission and Distribution Gross Plant excluding General Plant.
- 393 (Stores Equipment)—Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
- 394 (Tools, Shop and Garage Equipment)—Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
- 395 (Laboratory Equipment)—Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
- 396 (Power Operated Equipment)—Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
- 397 (Communication Equipment)—Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
- 398 (Miscellaneous Equipment)—Functionalize to Distribution/Other.
- 399 (Other Tangible Property)—Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
- 301-303 (Intangible Plant)—Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
- 114 (Acquisition Adjustment)—Labor Ratios.
- 105 (Plant Held for Future Use)—Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.
- 120.2-120.4 less 120.5 (Nuclear Fuel)—Functionalize to Production.
- 186 (Miscellaneous Debits)—Labor Ratios.
- 252 (Customer Advances)—Functionalize to Distribution/Other.
- 253 (Other Deferred Credits)—Functionalize to Distribution/Other.
- 255 (Accumulated Deferred Investment Tax Credits)—Functionalize to Distribution/Other.
- 257 (Unamortized Gain on Reacquired Debt)—Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.

281-283 (Accumulated Deferred Income Taxes)—Functionalize to Distribution/Other.

151-152 (Fuel Stock)—Functionalize to Production.

153-157, 163 (Materials and Supplies)—Functionalize on the ratio of Transmission and Distribution Gross Plant including General Plant.

106 (Completed Construction not Classified)—Functionalize on the ratio of Production, Transmission and Distribution Gross Plant excluding General Plant.

124 (Other Investment)—Functionalize to Distribution/Other.

184 (Clearing Accounts)—Labor Ratios.

Other Rate Base Accounts—Functionalize to Distribution/Other.

**2. Expense Accounts:**

- 501-577 (Fuel, Purchased Power and Power Production Expenses)—Functionalize to Production.
- 560-573 (Transmission Expenses)—Functionalize to Transmission.
- 580-598 (Distribution Expenses)—Functionalize to Distribution/Other.
- 901-905 (Customer Accounts Expenses)—Functionalize to Distribution/Other.
- 907 (Customer Service Information Expenses—Supervision)—Functionalize to Distribution/Other.
- 908-910 (Other Customer Service Information Expenses)—Functionalize to Distribution/Other.
- 911-916 (Sales Expenses)—Functionalize to Distribution/Other.
- 920 (Administrative & General Salaries)—Labor Ratios.
- 921 (Office Supplies & Expenses)—Labor Ratios.
- 922 (Administrative Expenses Transferred—Cr.)—Labor Ratios.
- 923 (Outside Services Employed)—Labor Ratios.
- 924 (Property Insurance)—Functionalize on the ratio of Production, Transmission, and Distribution Gross Plant including General Plant.
- 925 (Injuries & Damages)—Labor Ratios.
- 926 (Employee Pensions & Benefits)—Labor Ratios.
- 927 (Franchise Requirements)—Functionalize to Distribution/Other.
- 928 (Regulatory Comm. Fees & Expenses)—Functionalize to Distribution/Other.
- 929 (Duplicate Charges—Cr.)—Labor Ratios.
- 930.1 (General Advertising)—Functionalize to Distribution/Other.
- 930.2 (Miscellaneous General Expenses)—Functionalize to Distribution/Other.
- 931 (Rents)—Functionalize to Distribution/Other.

**3. Revenue Accounts:**

- 447 (Sales For Resale)—Functionalize to Production.
- 450-455 (Other Operating Revenues)—Functionalize to Production.
- 456 (Wheeling Revenues)—Functionalize to Transmission.

(C) The Following Accounts Shall be Functionalized as Follows:

- 107, 120.1 (CWIP)—Functionalize to Distribution/Other.

- 108 (PIS Depreciation Reserve)—The same functionalization used for accounts 310-373, Plant in Service (PIS).
- 108 (General Plant Depreciation Reserve)—Functionalize according to the General Plant ratio.
- 111 (Accumulated Amortization)—The same functionalization used for accounts 301-303, Intangible Plant.
- 256 (Deferred Gain from Disposition of Utility Plant)—The same functionalization used for account 105, Electric Plant Held for Future Use.
- 403-407 (PIS Depreciation Expense)—The same functionalization used for accounts 310-373, Plant in Service.
- 408.1 (Other Taxes)—With the exception of property taxes and labor related taxes, all taxes will be functionalized to Distribution/Other. Property taxes will be functionalized using the gross plant ratio including general plant. Labor related taxes will be functionalized using labor ratios.
- 409.1, 410.1, 411.1, 411.4 (Income Taxes)—Functionalize to Distribution/Other.
- 932 (Maintenance of General Plant)—Functionalize according to the ratio developed from the functionalized totals of accounts 390, 391, 397 and 398.
- 411.6, 411.7 (Gain from Disposition of Utility Plant)—The same functionalization used for account 105, Plant Held for Future Use.
- 3031E  
(Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839-839h)

#### PART 389—[AMENDED]

##### § 389.101 [Amended]

3. The Table of OMB Control Numbers in § 389.101(b) is amended by inserting "35.30" in numerical order in the section column, and "19020096" in the corresponding position in the OMB Control Number Column.

(Paperwork Reduction Act (44 U.S.C. 3501-3510))

[FR Doc. 84-26424 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

#### DEPARTMENT OF JUSTICE

#### Drug Enforcement Administration

#### 21 CFR Part 1308

**Schedules of Controlled Substances; Temporary Placement of Bromazepam, Camazepam, Clobazam, Clotiazepam, Cloxazolam, Delorazepam, Estazolam, Ethyl Loflazepate, Fludiazepam, Flunitrazepam, Haloxazolam, Ketazolam, Loprazolam, Lormetazepam, Medazepam, Nimetazepam, Nitrazepam, Nordiazepam, Oxazolam, Pinazepam, and Tetraxepam Into Schedule IV**

**AGENCY:** Drug Enforcement Administration, Justice.

#### **ACTION:** Finale rule.

**SUMMARY:** This final rule is issued by the Administrator of the Drug Enforcement Administration to temporarily place twenty-one (21) benzodiazepine substances into Schedule IV of the Controlled Substances Act (CSA) (21 U.S.A. 801 *et seq.*). The 21 benzodiazepine substances are bromazepam, camazepam, clobazam, clotiazepam, cloxazolam, delorazepam, estazolam, ethyl loflazepate, fludiazepam, flunitrazepam, haloxazolam, ketazolam, loprazolam, lormetazepam, medazepam, nimetazepam, nitrazepam, nordiazepam, oxazolam, pinazepam, and tetraxepam. This temporary scheduling action is required in order for the United States to discharge its obligations under the Convention on Psychotropic Substances, 1971. The effects of this rule will be to require that the manufacture, distribution, dispensing, security, registration, record keeping, reporting, inventory, exportation and importation of each of the 21 benzodiazepines are subject to controls for Schedule IV substances. The temporary scheduling order for each substance shall remain in effect until the process of permanent scheduling, pursuant to sections 201 (a) and (b) (21 U.S.C. 811 (a) and (b)) of the CSA, is completed.

**EFFECTIVE DATE:** November 5, 1984.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

#### **SUPPLEMENTARY INFORMATION:**

##### List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

By notice of March 29, 1984, the Secretary-General of the United Nations advised the Secretary of State of the United States that the Commission on Narcotic Drugs (CND) has decided that the above 21 benzodiazepine substances be added to Schedule IV of the Convention on Psychotropic Substances, 1971.

In a letter dated May 1, 1984, the Assistant Secretary for Health, on behalf of the Secretary of the Department of Health and Human Services (DHHS), advised the Administrator of the Drug Enforcement Administration that the 21 benzodiazepines be controlled in CSA Schedule IV, using authority provided by sections 201(d)(3)(B) and 201(d)(4)

(A) and (C) of the CSA. This allows for the issuance of a temporary order controlling a substance in Schedule IV or V, depending upon whichever is most appropriate to carry out the minimum United States obligations, within the time period required by paragraph 7 of article 2 of the Convention, that is, within 180 days after the date of the CND communication. The findings pursuant to sections 201 (a), (b) and 202(b) which concern an assessment of the abuse potential for each of the 21 benzodiazepines are neither established nor required for this temporary scheduling order.

On Wednesday, August 1, 1984, a notice was published in the *Federal Register* (49 FR 30748-9) proposing to temporarily place the 21 benzodiazepines into Schedule IV of the CSA. By this action, the United States would be in compliance with the drug control treaty, the Convention on Psychotropic Substances, 1971. All interested persons were given until August 31, 1984 to submit any comments or objections regarding the proposal. No comments or objections were received in response to the proposal nor were there any requests for a hearing.

Therefore, under the authority vested in the Attorney General by section 201(d)(4) (A) and (C) of the CSA (21 U.S.C. 811(d)(4) (A) and (C)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR Part 0.100), the Administrator hereby orders that paragraph (c) of § 1308.14 be amended by revising the list of controlled substances to read as follows:

#### § 1308.14 Schedule IV.

* * *	
(c) * * *	
(1) Alprazolam.....	2882
(2) Barbitol.....	2145
(3) Bromazepam.....	2748
(4) Camazepam.....	2749
(5) Chloral betaine.....	2460
(6) Chloral hydrate.....	2465
(7) Chlordiazepoxide.....	2744
(8) Clobazam.....	2751
(9) Clonazepam.....	2737
(10) Clorazepate.....	2768
(11) Clotiazepam.....	2752
(12) Cloxazolam.....	2753
(13) Delorazepam.....	2754
(14) Diazepam.....	2765
(15) Estazolam.....	2756
(16) Ethchlorvynol.....	2540
(17) Ethinamate.....	2545
(18) Ethyl loflazepate.....	2758
(19) Fludiazepam.....	2759
(20) Flunitrazepam.....	2763

(21) Flurazepam.....	2767
(22) Halazepam.....	2762
(23) Haloxazolam.....	2771
(24) Ketazolam.....	2772
(25) Loprazolam.....	2773
(26) Lorazepam.....	2885
(27) Lormetazepam.....	2774
(28) Mebutamate.....	2800
(29) Medazepam.....	2836
(30) Meprobamate.....	2820
(31) Methohexital.....	2264
(32) Methylphenobarbital (mephobarbital).....	2250
(33) Nimetazepam.....	2837
(34) Nitrazepam.....	2834
(35) Nordiazepam.....	2838
(36) Oxazepam.....	2835
(37) Oxazolam.....	2839
(38) Paraldehyde.....	2585
(39) Petrichloral.....	2591
(40) Phenobarbital.....	2285
(41) Pinazepam.....	2883
(42) Prazepam.....	2764
(43) Temazepam.....	2925
(44) Tetrazepam.....	2886
(45) Triazolam.....	2887

#### Effective Dates for applicable regulations:

All regulations applicable to each of the 21 benzodiazepines as temporarily controlled substances in Schedule IV of the CSA are effective on November 5, 1984, except as otherwise provided below:

1. *Registration.* Any person who manufactures, distributes, imports or exports any of the 21 benzodiazepines or who engages in research or conducts instructional activities, must apply for registration by November 5, 1984, to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* Each of the 21 benzodiazepines must be manufactured, distributed and stored in accordance with §§ 1301.71-1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of each of the 21 benzodiazepines must comply with the requirements of §§ 1302.03-1302.05 and 1302.08 of Title 21 of the Code of Federal Regulations by February 4, 1985.

4. *Inventory.* Every registrant required to keep records who possesses any quantity of any of the 21 benzodiazepines must take inventories pursuant to §§ 1304.11-1304.19 of Title 21 of the Code of Federal Regulations, of all stocks of these substances on hand.

5. *Records and Reports.* All registrants required to keep records and submit reports pursuant to Part 1304 of Title 21 of the Code of Federal Regulations shall do so regarding each of the 21 benzodiazepines.

6. *Prescriptions.* None of the 21 benzodiazepines can be prescribed

since none have attained accepted medical use in treatment status in the United States, as would be indicated by approval of a new drug application by the Foods and Drug Administration.

7. *Importation and Exportations.* All importation and exportation of each of the 21 benzodiazepines shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

8. *Criminal Liability.* The Administrator, Drug Enforcement Administration, hereby orders that any activity with respect to each of the 21 benzodiazepines not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act, conducted after (November 5, 1984) shall be unlawful, except that any person who is not now registered to handle each benzodiazepine but who is entitled to registration under such Acts may continue to conduct normal business or professional practice with any of the 21 benzodiazepines between the date on which this rule is published and the date which the person obtains or is denied registration provided that the application for such registration is submitted on or before November 5, 1984.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the placement of the 21 benzodiazepines into Schedule IV of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). This action involves the initial control of substances with no legitimate medical use in the United States and must be carried out in order to fulfill United States international treaty obligations, in any event.

In accordance with the provisions of 21 U.S.C. 811(d), this scheduling action is a formal rulemaking that is required by United States obligations under international convention, that is, the Convention on Psychotropic Substances, 1971. Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557, and as such, have been exempted from the consultation requirements of Executive Order 12991 (46 FR 13193).

Dated: October 1, 1984.

Francis M. Mullen, Jr.,  
Administrator, Drug Enforcement  
Administration.

[FR Doc. 84-26360 Filed 10-4-84; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 244

#### Wind River Reservation Game Code

September 24, 1984.

**AGENCY:** Bureau of Indian Affairs, Interior.

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

**SUMMARY:** The Bureau of Indian Affairs is publishing an interim rule for a new program which will establish a controlled wildlife hunting program on the Wind River Reservation in order to conserve, protect and increase the existing wildlife in the reservation area. Studies conducted on the Wind River Reservation indicate that certain species of wildlife are in danger of being hunted to the point where normal propagation and recovery will not occur unless a Game Code is implemented. Immediate implementation of a Game Code will provide conservation efforts to assure future wildlife habitation on the reservation.

**DATES:** This interim rule will become effective October 5, 1984. Comments must be received no later than November 5, 1984.

**ADDRESSES:** Send written comments to Sidney L. Mills, Director, Office of Trust Responsibilities, Code 200, Bureau of Indian Affairs, Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20245.

**FOR FURTHER INFORMATION CONTACT:** Gary Rankel, Fish and Wildlife Resources Specialist, Office of Trust Responsibilities, Bureau of Indian Affairs, telephone number (202) 343-4004.

**SUPPLEMENTARY INFORMATION:** This interim rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The objective of this rule is to establish a Game Code on the Wind River Reservation which will conserve, protect and eventually increase the wildlife on the Reservation.

The Wind River Reservation encompasses 1,886,556 acres in Fremont and Hot Springs counties in Wyoming. The Reservation was originally granted to the Shoshone Tribe by the Fort Bridger Treaty of 1863. In 1878, the Arapahoe Tribe was temporarily placed on the Reservation. The temporary status gradually became permanent and the Reservation is now shared by both tribes, see *Shoshone Tribe v. United*

States, 299 U.S. 476 (1937). The hostility which existed between the two tribes in early times has diminished but they continue to govern themselves separately. Each tribe has its own tribal council, and there is a joint business council of members from each tribe to conduct the business for the Reservation as a whole.

The topography of the Wind River Reservation varies from 4,200 feet at Boysen Reservoir to over 13,000 feet in the Wind River Mountains in the western part of the Reservation. The diversity of the topography provides excellent habitat for waterfowl and big and small game animals.

The fact that each tribe has its own council and governs itself separately has contributed to the necessity of this Game Code. In 1980, the Shoshone Tribe approved a Game Code for the Reservation, but the Arapahoe Tribe did not approve on the basis that the Code was too restrictive. In 1983, there was an extensive kill of big game animals on the Reservation. Again, the Arapahoe Tribe refused to accept a Game Code for the Reservation. In view of the requests by the Shoshone Tribe and studies conducted by the U.S. Fish and Wildlife Service, Lander, Wyoming, the Bureau of Indian Affairs has determined that a Game Code is needed on the Wind River Reservation. The U.S. Fish and Wildlife Service studies indicate that, unless a Game Code is adopted on the Wind River Reservation, wildlife could be reduced to a point where normal propagation and recovery will not occur.

This interim rule is intended for use only until it can be replaced with permanent regulations made with proper notice and public procedures. Comments are, therefore, invited on the interim rule for a period of 30 days after their publication. Upon consideration of the comments, permanent regulations will be developed and promulgated.

In order to permit hunting during the upcoming autumn hunting season for 1984, these regulations are issued on an emergency basis and may be subject to modification by the Wind River Agency Superintendent. Modifications will be advertised through local newspapers, postings on bulletin boards located at the Wind River Reservation Agency Headquarters, Post Office and tribal headquarters, and through other routine communications procedures. Therefore, the Department of the Interior has determined that good cause exists to make these regulations effective immediately under the exception provided for in 5 U.S.C. 553(d)(3).

The Department finds that there is an immediate need to protect reservation wildlife resources. The hunting season

on the Reservation has already begun, and the studies conducted by the U.S. Fish and Wildlife Service indicated that in the absence of a Game Code wildlife could be reduced to a point where normal propagation and recovery will not occur. The Department thus finds that notice and comment procedures prior to making the rule effective are impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B).

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291. Because the program will be confined to a localized area (Wind River Reservation Area) the economic effects will be relatively insignificant and essentially no detectable economic fluctuation will occur either on or outside the reservation. Over time, discernable economic gain imposed through licensing will be directed into wildlife management and research by existing employees. Conversely, a short-term economic loss may be manifested only through a reduction in supplemental food availability on a case-by-case basis. Consequently, the potential for significant economic impact is diminished to the point of being undetectable.

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The interim rule will affect only a small percentage of the total United States population: approximately 5,505 enrolled members of the Wind River Reservation. The interim rule will not have any effect on other United States based enterprises because the rule only provides the regulations for the hunting program on the Wind River Reservation, and there are no competing products or services involved.

The information collection requirements contained in § 244.17 have been approved by the Office of Management and Budget as required by 44 U.S.C. 3504(h) *et seq.*, and have been assigned approval number 1076-0085.

The primary author of this document is Dave Pennington, Billings Area Office, Bureau of Indian Affairs, Billings, Montana, telephone number (406) 657-6325.

Because of the need to promulgate these regulations on an emergency basis if the wildlife resources of the Wind River Reservation are to be protected, there has been insufficient time to prepare an environmental impact statement or assessment. An environmental impact statement or

assessment, as appropriate, will be prepared before these regulations are made permanent (i.e., after the notice and comment period).

#### List of Subjects in 25 CFR Part 244

Indian-lands, Wildlife-animals, and Hunting.

Subchapter J of Title 25 of the Code of Federal Regulations is amended by adding a new Part 244 to read as follows:

#### PART 244—WIND RIVER RESERVATION GAME CODE

- Sec.
- 244.1 Purpose and information collection.
  - 244.2 Definitions.
  - 244.3 Administration and supervision.
  - 244.4 Closed areas, pre-Sundance season, and predatory and small game season.
  - 244.5 Waterfowl hunting.
  - 244.6 Endangered species.
  - 244.7 Protected species of birds and mammals.
  - 244.8 Trapping regulations.
  - 244.9 Authorized enforcement officers.
  - 244.10 Violations of game code.
  - 244.11 Hunting by non-members prohibited.
  - 244.12 Firearms restrictions.
  - 244.13 Prohibited hunting procedures.
  - 244.14 Hunters required to wear colored clothing.
  - 244.15 Hunting hours.
  - 244.16 Age restrictions.
  - 244.17 Permit requirements, costs and procedures.
  - 244.18 Civil penalties.
  - 244.19 Tagging procedure for harvested big game and some furbearing animals.
  - 244.20 Restrictions on motor vehicle use, posting of notices and exceptions.
  - 244.21 Interference with persons engaged in authorized activities.
  - 244.22 False personation.
  - 244.23 Expenditures of funds, source and functions.
  - 244.24 Taking birds.
  - 244.25 Other prohibited activities.

Authority: 43 U.S.C. 1457; 25 U.S.C. 2, 9; Reorganization Plan No. 3 of 1950 (64 Stat. 1262); 18 U.S.C. 1165; Lacey Act Amendments of November 16, 1981, 18 U.S.C. 3372; Treaty of Fort Bridger, July 3, 1868 (15 Stat. 673); 5 U.S.C. 301.

#### § 244.1 Purpose and information collection.

(a) The purpose of these regulations is to ensure proper wildlife management and protection on the Wind River Indian Reservation while concurrently providing the opportunity for tribal members to utilize the wildlife resources. This Game Code will remain in full force and effect until such time that it is replaced by a Code jointly adopted by the Shoshone and Arapahoe Tribes.

(b) The information collection requirements contained in § 244.17 have

been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) and assigned clearance number 1076-0085. This information will be collected to support the Wind River Agency Superintendent in managing and regulating the harvest of wildlife on the Reservation. The information will be used to identify eligible participants in the hunting program. Response is mandatory for exercise of hunting privileges.

#### § 244.2 Definitions.

As used in this part:

"Aircraft" means any flying machine whether fixed-wing or helicopter.

"Antlered Deer" means any antlered mule deer, or whitetail deer, including deer with spikes.

"Any Elk" means an elk of any age and of either sex.

"Area Director" means the Director of the Billings Area Office of the Bureau of Indian Affairs.

"Authorized Officer" means any law enforcement officer of the Department of the Interior, and any other person authorized by this Part to enforce these regulations.

"Bag Limit" means the maximum limit, in number amount, of a particular species of wildlife, which may lawfully be taken by one person in one day.

"Big Game" means any one of the following species of animals: elk, mule deer, whitetail deer, bighorn sheep, moose, antelope, black and grizzly bear, and mountain lion.

"Buck Antelope" means a male antelope with horns longer than his ear.

"Bureau" means Bureau of Indian Affairs (BIA).

"Carcass" means the dead body of an animal or parts thereof.

"Closed Season" means the time during which wildlife may not be lawfully taken.

"Cross-Country Vehicles" means those vehicles designed or used to travel on the snow or across the terrain, including, but not limited to, snow cats, snowmobiles, all-terrain vehicles, four-wheel drive vehicles and dirt bikes.

"Drift Fence" means the main North to South barbed wire fence constructed by the Civilian Conservation Corps (CCC) in 1936 to control livestock movement on the Wind River Reservation.

"Falconry" means the taking of wildlife with birds of prey.

"Fur-Bearing Animals" means muskrats, raccoons, marten, mink, beaver, badger and weasel.

"Harass" means to chase, shoot at, or, in any other manner, intentionally disturb wildlife.

"Hunting" means to take any bird or animal by any means.

"License" means a written document granting authority to engage in specific activities covered in this Code.

"Member" means any enrolled member of the Shoshone or Arapahoe Indian Tribes.

"Nongame Animals" means all wild animals except big game, small game, fur-bearing animals, predatory animals, and aquatic wildlife.

"Nongame Birds" means all birds except upland game birds and migratory game birds.

"Non-Member" means any individual who is not enrolled in either the Shoshone or Arapahoe Tribes.

"Pollution of Water" means the discharge or dumping into any stream or body of water, or depositing within such distance that it may be carried into such water, any poisonous, deleterious, or polluting substance or waste that is or may be injurious to aquatic or non-aquatic wildlife, domestic animals or human beings.

"Predatory Animals" means foxes, skunks, and coyotes.

"Pre-Sundance" means the designated period of time before the Sundance ceremony.

"Reservation" means the Wind River Indian Reservation.

"Road" means any maintained road that has been used by the public.

"Scientific Collection Permit" means a special permit issued for the taking of wildlife specimens for scientific purposes.

"Small Game" means any of the following species of mammals: cottontail rabbit, jack rabbit, snowshoe hare, marmot (rock chuck) and prairie dog.

"Snowmobile" means any motorized vehicle designed for travel on snow and/or ice and steered and supported in whole or in part by skis, belts, cleats, runners, or low pressure tires.

"Sundance" means the annual religious ceremony approved by the Arapahoe and Shoshone Tribal Councils.

"Superintendent" means the Superintendent of the Wind River Agency, Bureau of Indian Affairs.

"Tag" or "Big Game Tag" means an identification device issued for attachment to the carcass of big game animals.

"Take" or "Taking" means pursuing, shooting, shooting at, hunting, netting (including placing or setting any net or other capturing device), killing, capturing, snaring, or trapping wildlife, or attempting any of the foregoing.

"Trapping" means the taking of wildlife in any manner except with gun or implement in hand.

"Upland Game Bird" means any of the following species of birds: sage grouse,

blue grouse, ruffed grouse, hungarian (gray) partridge, chukar, pheasant, mourning dove and rock dove.

"Waterfowl" means all species of ducks and geese (not including swans) of the Order Anseriformes.

"Wildlife" means any wild forms of birds and mammals including their nests and eggs.

"Wildlife Area" means an area established by the Department of the Interior—BIA for special wildlife protection, research, or management practices.

#### § 244.3 Administration and supervision.

(a) The Billings Area Office Director is authorized by the Assistant Secretary for Indian Affairs to be the official in charge of the Game Code. Local administration of the program will be the responsibility of the Wind River Agency Superintendent.

(b) When Part 244 is published in the Federal Register, the Wind River Agency Superintendent shall establish the hunting season, define the hunting areas, set the permit fees and establish season limits for all wildlife hunting for the 1984 season. The Superintendent shall after consultation with the Tribes, establish the hunting season, define the hunting areas, set the permit fees and establish season limits for all wildlife hunting on or before June 1 of each year thereafter. Also, on or before June 1, the Area Director shall notify the Tribal Councils, in writing, and publish in the Riverton Ranger newspaper, the explicit hunting program for that year, and the Superintendent shall post such hunting program on bulletin boards located at the Reservation Agency headquarters, Post Office and tribal headquarters.

(c) The Area Director is authorized to make in-season and emergency changes when necessary to ensure proper implementation of the Game Code. The Superintendent is responsible for having each emergency or in-season adjustment published in the local newspaper as a legal notice, and post each such adjustment on bulletin boards located at the Reservation Agency headquarters, Post Office and tribal headquarters, at least twenty-four hours before it becomes effective.

#### § 244.4 Closed areas, pre-Sundance season, and predatory and small game season.

(a) *Closed areas.* The following areas are closed to all big game hunting:

- (1) The Wind and Big Wind Rivers, Little Wind River, South and North Forks of the Little Wind River below the "Drift Fence", and the Popo Agie River;
- (2) Land below the "Drift Fence"; and

(3) The Wind River Canyon proper.

(b) *Pre-Sundance deer and elk season.* The Superintendent shall establish an open season for male deer and male elk before the Sundance ceremony. Hunting of does, fawns, cows or calves shall be prohibited. Sundance participants (hunting) must be verified by an elder of the Sundance prior to obtaining a permit from the Superintendent. Permittees must report harvest information to the Superintendent. (See Section 244.17(e)(6) for reporting requirements.)

(c) *Predatory and small game season and bag limit(s).* Hunting shall be open all year for predatory and small game animals. There is no bag limit for predatory and small game animals.

#### § 244.5 Waterfowl hunting.

Hunting of waterfowl on the Reservation must comply with the rules and regulations promulgated under the Federal Migratory Bird Treaty Act.

#### § 244.6 Endangered species.

The following list of species are Federally classified as endangered or threatened with extinction and are protected from all hunting, taking or harassment on the Reservation:

- (a) Bald Eagle,
- (b) Black-Footed Ferret,
- (c) Gray Wolf,
- (d) Grizzly Bear, and
- (e) Whooping Crane.

#### § 244.7 Protected species of birds and mammals.

The following species of birds and mammals are completely protected from any hunting, trapping, shooting or taking on the Reservation:

- (a) Golden Eagle;
- (b) All species of hawks and falcons (Order Falconiformes);
- (c) All species of owls (Order Strigiformes);
- (d) Whistling and trumpeter swans (Order Anseriformes—Sub-family Cygninae);
- (e) All species of migratory shorebirds, wading birds, and seabirds including loons, grebes, cormorants, herons, egrets, pelicans, cranes, curlews, plovers, avocets, phalaropes, sandpipers, gulls, and terns (orders Gaviiformes, Podicipediformes, Pelicaniformes, Ciconiiformes, Gruiformes [Family Gruidae], and Charadriiformes);
- (f) All species of songbirds including woodpeckers, swallows, swifts, hummingbirds, nighthawks, kingfishers, jays, ravens, wrens, thrushes, chickadees, bluebirds, vireos, warblers, blackbirds and sparrows (orders Caprimulgiformes, Apodiformes, Piciformes, and Passeriformes); and

(g) Lynx, river otter, wolverine, fisher, marten, and bobcat.

#### § 244.8 Trapping regulations.

Trapping will be allowed only in areas designated by the Wind River Agency Superintendent. The Superintendent will establish the trapping season each year and list the animals that can be trapped. Each trapper must obtain a trapping permit from the Superintendent. Also, each trapper must identify individual traps with a metal tag bearing his name. The Superintendent shall designate which trapped animal needs a pelt tag and the Superintendent shall set the cost of the pelt tag.

#### § 244.9 Authorized enforcement officers.

Department of the Interior peace officers and other officers designated by the Bureau shall have the authority and the duty to enforce the provisions of the Game Code, and shall be referred to in this Code as "Authorized Officers."

#### § 244.10 Violations of game code.

(a) Any person who violates any provision of this Game Code shall be subject to prosecution in federal court under applicable laws, e.g., 18 U.S.C. 1165 and the Lacey Act Amendments of November 16, 1981, 16 U.S.C. 3371. Any member who has committed a violation of this Code shall be subject to a fine of not more than \$10,000, or to imprisonment of not more than one year, or to a combination of both fine and imprisonment per offense.

(b) Any wildlife taken, or firearms, vehicles, or other equipment used in violation of this Code may be confiscated as provided for under 16 U.S.C. 3374.

#### § 244.11 Hunting by non-members prohibited.

There shall be no hunting by persons other than enrolled members of the Shoshone and Arapahoe Tribes on any Indian land of the Reservation. Non-enrolled spouses of tribal members are not allowed to hunt.

#### § 244.12 Firearms restrictions.

For hunting big game, the use of firearms with a barrel bore diameter of less than .23 (23/100) of an inch, or chambered to fire a cartridge less than two inches in overall length, will not be allowed. Firearms for hunting upland game birds (excluding blue and ruffed grouse) and waterfowl are restricted to shotguns of twelve (12) gauge or smaller. Ten (10) gauge shotguns are allowed only for goose hunting. The use of fully automatic weapons or devices designed to silence or muffle the sound of any

firearm for hunting any wildlife is prohibited.

#### § 244.13 Prohibited hunting procedures.

The following hunting procedures are illegal and prohibited on the Reservation.

(a) *Hunting with aircraft or motor vehicle.* No person shall pursue, harass, hunt, shoot, or kill any wildlife with, from, or by use of aircraft or motorized vehicle (truck, automobile, motorcycle, all terrain vehicle or vehicle designed for travel over snow).

(b) *Use of artificial light.* No person shall hunt, pursue or kill any game animal or game bird, through the use of any artificial light or lighting device (including spotlights, and automobile, snowmobile, all terrain vehicle and motorcycle headlights).

(c) *Sale of game and blood antlers.* No person shall sell, offer for sale, or barter, or have in possession with intent to sell, any wildlife, blood antlers or any edible portion of any game animal or bird. No person shall obtain by sale or barter, any wildlife, blood antlers or any edible portion of any game animal or bird.

(d) *Wanton waste of game.* (1) No person who takes any upland game bird, waterfowl, or big game animal, shall abandon or intentionally or needlessly allow to go to waste, any portion thereof. The failure of any person to properly dress and care for any big game animal killed by that person, and, if the carcass is reasonably accessible, the failure to take or transport the carcass to the camp of that person, and there properly care for the carcass within 48 hours after killing, is prima facie evidence of a violation (see § 244.10).

(2) No person shall abandon edible portions of a big game animal or game bird at a meat processing plant. The leaving of edible portions of a big game animal at a processing plant for more than 90 days shall be considered prima facie evidence of a violation. The owners or operator in charge of any meat processing plant shall immediately report the violation to the Superintendent. Notwithstanding any other provision of this Code, the owner of the plant is entitled to all or a portion of the abandoned meat, or to the proceeds of sale by ruling of Federal Court of any meat abandoned, up to the amount of reasonable processing and storage charges, following a conviction or within a reasonable time after the violation is reported.

(e) *Shooting from or across roads.* No person shall fire any firearm from, upon, along or across any public road or highway.

(f) *Hunting big game with dogs.* No person shall use dogs to track, chase, kill, or in any other way hunt big game animals. Dogs so used or observed harassing big game animals may be shot by enforcement officers to protect big game animals.

(g) *Use of poisons.* The use of any poisons to take any wildlife is prohibited.

(h) *Unlawful possession of wildlife.* It shall be unlawful to possess any wildlife or parts thereof unless it can be shown by the possessor that he or she has the requisite license and/or tags or other express written authorization by the BIA to hunt or take such animal, or that the animal was given to the possessor by a licensed hunter or trapper.

(i) *Hunting with the firearm while intoxicated or under influence of a controlled substance.* (1) It shall be unlawful for any person intoxicated or under the influence of a controlled substance to carry a firearm (loaded), or to take any wildlife.

(2) It shall be unlawful for any person to handle or discharge a firearm in a careless or reckless manner, or with wanton disregard for the safety of human life and property.

(j) *Aiding in concealment of wildlife unlawfully taken or possessed.* No person shall knowingly aid or assist in the concealment of any wildlife that has been unlawfully taken or is unlawfully possessed.

(k) *Hunting on private property or near buildings without permission.* (1) No person shall hunt, trap or discharge firearms upon the private property of another without knowledge and consent of the property owner.

(2) No person shall hunt or discharge firearms within 200 yards of an occupied building, whether on privately-owned or Tribal land, without the consent of the person(s) occupying such building.

(l) *Destruction of private or public property.* No person shall deface, shoot at, or destroy public or private property, including signs, fences, livestock or improvements.

(m) *Hiring another to hunt or hunting for remuneration.* No person shall hire another person to hunt game for him or her, nor shall any person hunt game animals for another in return for payment of goods, services, or money.

**§ 244.14 Hunters required to wear colored clothing.**

No person shall hunt any big game animal without wearing, in a visible manner, exterior garments of a fluorescent orange color, which shall include a hat, and either a shirt, vest, jacket, coat, sweater or other upper body garment.

**§ 244.15 Hunting hours.**

No person shall pursue, shoot, kill or attempt to take any wildlife between ½ hour after sunset of one day and ½ hour before sunrise of the next day.

**§ 244.16 Age restrictions.**

The following age restrictions shall apply for hunting on Indian lands on the Reservation.

(a) The minimum age to take any big game animal is 14 years.

(b) No person under 12 years of age may take any game bird, small game, waterfowl or predator unless accompanied by an adult.

(c) Non-enrolled children of enrolled members may take wildlife, but, at age 16, non-enrolled children lose all tribal hunting and trapping rights.

**§ 244.17 Permit requirements, costs and procedures.**

The following permit program will be implemented for qualified persons to hunt on Indian lands on the Reservation.

(a) *Requirements.* (1) No person shall be allowed to take or attempt to take any wildlife without a proper permit and tags (see § 224.18) in their possession. Also, no person taking or attempting to take wildlife on the Reservation shall fail or refuse to exhibit their permit(s) to an authorized officer upon request.

(2) State of Wyoming hunting licenses shall not be required for enrolled tribal members hunting on Indian lands of the Reservation.

(b) *Permit costs.* Permit fees for hunting on Indian lands on the Reservation will be established annually and published by the Superintendent and will be used for the purposes of administering this game code.

(c) *Procedures.* (1) Permits (licenses) shall be issued in the name of the Department of the Interior—BIA. Each permit shall be signed by the permittee in ink on the face thereof. Any permit not signed is invalid. With each permit authorizing the taking of wildlife, the Bureau shall provide such tags as required. Tags shall be attached in a manner prescribed by the Superintendent.

(2) It shall be unlawful for any person to obtain and sign, as a permittee in any one permit year, more than one tag for the taking of each authorized big game species.

(3) The Bureau may issue a duplicate permit, provided that the person requesting such duplicate permit furnishes the information deemed necessary. A fee of \$2.00 shall be collected for each duplicate permit issued.

(d) *Permit conditions required.* All persons to whom permits are issued by

the Bureau shall be required to sign permit conditions before any such permit shall be valid. The permit conditions shall be in the form provided by § 244.17(e). The permit conditions shall be signed by the applicant in the presence of the person issuing the permit.

(e) *Permit conditions.* Permit conditions shall be printed on the back of all permits and shall take the following form:

(1) I hereby agree as consideration for the granting of this permit, that the following terms and conditions govern my use of the permit.

(2) I agree to obey all Federal laws and regulations.

(3) I consent to the absolute and exclusive jurisdiction of Federal Court for any disputes arising from my use of resources administered by the Federal Government.

(4) I understand that taking of wildlife on the Wind River Reservation is conditioned on my obedience of Federal laws and regulations and that violation of such laws and regulations makes me subject to arrest, Federal court action, loss of present and future permits and seizure of property as security for payment of potential financial obligations to the Department of the Interior.

(5) I understand that willfully using wildlife resources contrary to the terms of Federal law or regulation, constitutes theft of Federal assets and is a violation of Federal law.

(6) I agree to return all unused tags within 20 days after close of the season. For each tag used to tag a harvested animal, the following information must be provided to the Superintendent no later than 20 days after the close of the big game season:

(i) Species of animal killed.

(ii) Sex of animal killed.

(iii) If a deer or elk, list number of points, or if a spike.

(iv) Date animal was killed.

(v) Approximate location of kill.

(7) For each tag a hunter does not return or for which the above harvest information is not provided, either in person or by mail, to the Superintendent within the allotted time frame, loss of hunting privileges for one or more big game seasons, will result. This information is needed to obtain a profile of the big game harvest to aid in setting future seasons and properly manage big game on the Reservation.

(8) The front of the permit form shall contain the following words, "I have read and hereby agree to abide by the Wind River Reservation Game Code and Permit conditions as stated on the

reverse. This permit is not valid unless signed in ink in the presence of designated official."

(f) *Revocation and denial of right to obtain permit: Notice.* In addition to or as an alternative to pursuing the other remedies provided by this Code, the Superintendent, after notice, may suspend or revoke, for a period not to exceed five years, the permit and privilege to take wildlife of any person who:

- (1) Unlawfully takes or possesses wildlife.
- (2) Carelessly uses a firearm or other weapon.
- (3) Destroys, injures, or molests livestock, or damages or destroys crops, personal property, notices, signboards, or other improvements while taking wildlife.

(4) Before any such suspension or revocation, the Superintendent shall notify the person whose privileges may be suspended to appear and show cause why they should not be suspended.

(5) The Superintendent shall maintain the names and addresses of persons whose permits have been revoked or suspended, and the periods for which they have been denied the right to secure permits.

(g) *Obtaining a permit by fraud or misrepresentation.* (1) No person shall, by fraud or misrepresentation, obtain a permit to take wildlife, and any permit thus obtained is null and void from the date of issuance thereof.

(2) It shall be unlawful for any person to issue a permit of any kind to a person whose privileges to obtain that permit has been suspended or revoked. Any permit issued to a person whose privilege to have that permit has been revoked or suspended, shall be void.

(h) *Transportation permits.* A person may transport big game legally taken by another person provided that the big game has attached to it a permit for the taking of that game endorsed by the person who took it. Wildlife shall be transported in such a manner that it may be inspected by authorized persons upon demand until the wildlife is processed. No person shall possess more than one bag or possession limit of any species of wildlife, except for the purpose of transportation. The Superintendent can be contacted for information on transporting game off of the Reservation.

#### § 244.18 Civil penalties.

In addition to or as an alternative to pursuing the other remedies provided by this Code, violators shall be subject to the Civil Penalty provisions of 16 U.S.C. 3142(g). The rules and procedures for the assessment of civil penalties and

forfeitures included in 50 CFR Parts 11 and 12 shall be followed by the Superintendent in referring cases to the Office of the Solicitor, Department of the Interior.

#### § 244.19 Tagging procedure for harvested big game and some fur-bearing animals.

(a) Tags are required for hunting big game and some fur-bearing animals on the Reservation. The Superintendent shall publish a list on or before June 1 of the animals that can be hunted with required tags.

(b) Upon application for a big game permit, tags will be issued for each species for which a permit is issued. Each tag shall bear the permittee's big game permit number and name of the species for which it is issued. Tags are not transferable. Evidence of sex must remain attached to the carcass in the field and during transportation. Big game tags shall be carried by the permittee at all times while hunting. No big game animal shall be transported, stored, or possessed unless the tag has been securely attached.

#### § 244.20 Restrictions on motor vehicle use, posting of notices and exceptions.

(a) *Motor vehicle use.* When the Superintendent determines that the operation of motor vehicles within a certain area is or may be damaging to wildlife reproduction, wildlife management, wildlife habitat, or special studies, the Superintendent may post notices closing the area(s) to motor vehicles for a designated period of time, *Provided That:* All roads in the area shall remain open unless specifically closed.

(b) *Notices of restrictions, posting and publication.* For all areas specified pursuant to § 244.20(a), the Superintendent shall cause notice of the restrictions, prohibitions or permitted uses of such area to be posted, prior to the effective date of such changes in use, the main roads and highways entering such area and at such locations as the Area Director deems appropriate. In addition to the posted notices required by § 244.20(a), the Superintendent shall cause a notice of such restrictions, prohibitions, or permitted uses, together with a description of the area, to be published in the local newspaper prior to the effective date of such changes in use.

(c) *Roadless area.* In compliance with 25 CFR Part 263, no person shall drive any motor-operated vehicle in the designated Wind River Roadless Area. Also, it is illegal to operate any motor-operated vehicle cross-country on Federal lands where cross-country driving is prohibited.

(d) *Exceptions.* The restrictions, prohibitions or permitted uses established in § 244.19(a) shall not apply to:

(1) Public employees acting within the scope of their employment.

(2) Holders of valid licenses or permits. Holders of such licenses and permits shall be limited to the specified purposes and area of travel for which such licenses or permits were issued or granted.

(3) A licensed hunter who enters an area solely to pick up a big game animal which he/she has legally killed.

(4) Emergency situations, such as fire or other disasters, or when otherwise necessary to protect life or property.

#### § 244.21 Interference with persons engaged in authorized activities.

Disturbing, molesting or interfering with any employee of the United States or of any local or state government employee engaged in official business, or with any private person engaged in the pursuit of an authorized activity on the Reservation is prohibited.

#### § 244.22 False personation.

(a) Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or office thereof, and acts as such, or in such pretended character demands or obtains any money, paper, document or thing of value, shall be fined not more than \$1,000 or imprisoned not more than three years, or both.

(b) Whoever falsely represents himself/herself to be an officer, agent, or employee of the United States, and in such assumed character arrests or detains any person or in any manner searches the person, buildings or other property of any person, shall be fined not more than \$1,000 or imprisoned not more than three years, or both.

#### § 244.23 Expenditures of funds, source and functions.

The Area Director and Superintendent may expend such funds as may become available from funds appropriated to carry out the provisions of this Game Code, including, but not limited to, expenditures for:

(a) Investigations and surveys of actual or possible wildlife habitat damage by motor vehicles and the study of areas to be recommended for cross-country vehicle use.

(b) Posting notices of restrictions, prohibitions and permitted uses of motor vehicles.

(c) Providing maps.

(d) An information and education program on wildlife habitat preservation and restoration.

(e) The enforcement of the provisions of this Game Code or any rule or regulation adopted pursuant to this Code.

#### § 244.24 Taking birds.

No person shall take or injure any bird or harass any bird upon its nest, or remove the nest or eggs of any bird, except as may occur in normal horticultural and agricultural practices and as may be authorized by the Area Director. Nothing in this Code shall be construed to prohibit the taking of such birds for scientific purposes.

#### § 244.25 Other prohibited activities.

Except as otherwise provided by this Code, in addition to all other activities prohibited, while hunting, by this Code, it shall be unlawful for any person to:

(a) Destroy or deface signs, tables, improvements, crops, or personal or real property;

(b) Destroy, remove, injure or cut any green tree on the Reservation without written BIA authorization;

(c) Cut, damage, or destroy any fence on the Reservation;

(d) Hunt big game on the Reservation without a valid permit in possession;

(e) Take big game in excess of the number permitted by Bureau regulations or hunt big game during a period of the year not permitted by Bureau regulations;

(f) Hunt big game in any manner or place not permitted by Bureau regulations;

(g) Enter upon land closed to entry while hunting, fishing, camping, or hiking or while travelling on the Reservation;

(h) Detach or remove, or attempt to detach or remove from the carcass of a big game animal, a portion thereof for the purpose of misrepresenting or concealing the species or sex of the animal;

(i) Use any explosive compound or corrosive, narcotic, poison or other deleterious substance for the purpose of taking, stunning, or killing, birds, small game or big game;

(j) Take, possess, transport, buy, sell or offer for sale any migratory bird taken on the Reservation, except as permitted by this Code or other Federal regulations;

(k) Carry, transport, or possess devices for taking game within or upon a game refuge, except as permitted by this Code or other Federal regulations;

(l) Enter any special use area of the Reservation without a proper Special Use Permit;

(m) Disobey a lawful order of any authorized officer; or

(n) Cross-country ski, snowmobile, sled, tube or toboggan in key wildlife winter critical habitat areas closed to such activities upon public notice from the Superintendent.

Kenneth L. Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 84-29644 Filed 10-4-84; 8:45 am]

BILLING CODE 4310-02-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[T.D. 7981]

#### Income Tax; Taxable Years Beginning After December 31, 1983; Limitation on Aggregate Amount of Private Activity Bonds

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary income tax regulations relating to the tax exempt status of private activity bonds. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1984. These regulations affect all purchasers and governmental issuers of tax exempt private activity bonds. In addition, the text contained in the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the *Federal Register*.

**DATE:** The temporary regulations are effective in general for governmental obligations issued after December 31, 1983.

**FOR FURTHER INFORMATION CONTACT:** Mitchell H. Rapaport of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3590).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains temporary regulations relating to the limitation on the aggregate amount of private activity bonds that may be issued by a governmental unit under section 103(n) of the Internal Revenue Code of 1954 as amended by section 621 of the Tax Reform Act of 1984 ("the Act") (Pub. L. 98-369; 98 Stat. 915). Further, new

§§ 1.103(n)-1T through 1.103(n)-6T are added by this document to Part 1 of Title 26 of the Code of Federal Regulations. The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

#### Explanation of Provisions

Section 103(n) of the Internal Revenue Code of 1954 provides that a private activity bond issued as part of an issue shall not be treated as an obligation described in section 103(a) if the aggregate amount of private activity bonds issued by the issuing authority during the calendar year exceeds such authority's private activity bond limit for the calendar year. Section 103(n), in effect, provides a ceiling on the aggregate amount of private activity bonds that may be issued within a State during a single calendar year.

In general, the term "private activity bond" means industrial development bonds or student loan bonds the interest on which is tax exempt under section 103(a). There are three principal exceptions to this general definition, however.

First, obligations described in section 103(b)(4)(A) to provide residential rental projects and housing program obligations issued under the United States Housing Act of 1937 are not private activity bonds.

Second, obligations that are part of an issue substantially all of the proceeds of which are to be used to provide a facility described in section 103(b)(4)(C) or (D) (other than a parking facility) are not private activity bonds if the property described in those subparagraphs is owned for Federal income tax purposes generally by, or on behalf of, a governmental unit. This exception applies only to certain large, one-time projects that are traditionally thought of as public facilities and only if a governmental unit owns the facility. For this reason, for purposes of § 1.103(n)-2T, the term "facility" has been construed broadly. Thus, § 1.103(n)-2T provides, generally, that this exception to the definition of the term private activity bond will not apply unless the entire facility is owned by a governmental unit. Although the statute provides no exceptions to this rule, the regulations set forth certain limited exceptions.

In determining whether a facility is owned by a governmental unit, all facts and circumstances will be considered. Nevertheless, for purposes of this exception, property will not be treated as owned by a lessee of that property solely because of the length of the lease

if the lessee elects not to claim depreciation or an investment credit with respect to the property. This special rule only applies in situations where the lessee is the owner solely because of the length of the lease; if for Federal income tax purposes generally a non-governmental lessee is the owner of the property other than solely by reason of the length of the lease, the fact that the lessee elects not to claim depreciation or an investment credit with respect to the leased property will not prevent the obligations involved from being private activity bonds. In addition, even if a governmental unit is the owner of property for Federal income tax purposes generally, the governmental unit will not be treated as the owner of the property for purposes of this exception where the property is leased to a non-governmental entity under a lease that provides for significant front end loading of rental accruals or payments.

The third principal exception to the definition of the term "private activity bond" is that obligations issued to refund any other issue of governmental obligations described in section 103(a) are not private activity bonds. This exception for refunding obligations only applies to the extent that the aggregate amount of the refunding obligation does not exceed the outstanding principal amount of the refunded obligation; any excess is treated as the proceeds of a private activity bond (unless one of the other exceptions to the definition of private activity bond applies to the excess). In the case of obligations to refund student loan bonds, the refunding obligation exception will not apply if the refunding obligations have the effect of extending the maturity of the prior issue beyond the statutorily specified limit.

Section 631(a) of the Act provides that Code section 103(n), in general, applies to obligations issued after December 31, 1983. Section 103(n) does not apply to an issue of obligations, however, if there was an inducement resolution for the project prior to June 19, 1984, and the issue is issued before January 1, 1985.

Section 631(a)(3) of the Act requires that issuing authorities allocate a portion of their private activity bond limits to certain projects described in an inducement resolution that existed prior to October 19, 1983. The temporary regulations provide that in order for a project to qualify for the rights granted by section 631(a)(3), a substantial user of the project must notify the issuing authority by December 31, 1984, as to the year in which the obligations to provide the project will be required to be issued. This rule is intended to

provide issuing authorities with notice so that they will be able to determine the amount of the private activity bond limit available for other projects. If the obligations are not issued during the calendar year in which the substantial user stated that such obligations would be required, the project will lose its priority under section 631(a)(3). This rule does not, however, prevent an issuing authority from allocating a portion of its private activity bond limit for a later year to that project.

If the amount of obligations required by all projects that meet the requirements of section 631(a)(3) of the Act exceeds the issuing authority's private activity bond limit, priority shall be provided first to those projects for which substantial expenditures were incurred before October 19, 1983. Issuers may define the term "substantial expenditures" in any reasonable manner based on the relevant facts and circumstances and the issuing authority's private activity bond limit.

The temporary regulations provide a formula for determining the State ceiling. In general, the State ceiling is equal to the greater of \$200 million or an amount equal to \$150 multiplied by the State's population. Section 103(n) and the temporary regulations provide a formula for allocating the State ceiling among the State agency or agencies that are authorized to issue private activity bonds and the other issuing authorities within the State. This formula is based on population. The effect of the formula is to set at zero the private activity bond limit for issuing authorities other than general purpose governmental units, e.g., States, cities, and counties. These provisions are consistent with the intent of Congress that the decision as to what types of projects should be financed is best made by the appropriate State or local government. This formula prevents the occurrence of anomalous results, such as a general purpose governmental unit having little or no private activity bond limit due to the fact that a special purpose governmental unit or a constituted authority empowered to issue private activity bonds on behalf of the general purpose governmental unit has jurisdiction over a slightly smaller area than the general purpose governmental unit.

Although issuing authorities other than general purpose governmental units will be allocated private activity bond limits of zero, a general purpose governmental unit generally is free to assign all or any portion of its private activity bond limit to any authority empowered to issue private activity bonds on its behalf and to any special

purpose governmental unit within the State deriving sovereign powers from it. Under the allocation formula provided in section 103(n) (2) and (3), however, most other assignments are prohibited. A special rule is provided, however, for regional authorities empowered to issue private activity bonds on behalf of more than one governmental unit.

Under section 103(n)(6) a State may provide a formula for allocating the State ceiling different from the formula specified by section 103(n) (2) and (3). Any such formula, however, will not cause any outstanding obligation that complied with section 103(n) when issued retroactively to fail to comply with section 103(n). A State may not increase or decrease the State ceiling amount by providing a different allocation.

Section 103(n) permits an issuing authority to elect to carry forward its unused private activity bond limit for any calendar year. The carryforward must be for a specific carryforward project. The carryforward permits the issuing authority to issue private activity bonds in later years for the carryforward project; such obligations will count against the carryforward (to the extent thereof) and not against the issuing authority's private activity bond limit for the year in which the obligations are issued until the carryforward amount is exhausted.

Section 103(n)(12) provides that the interest on a private activity bond allocated a portion of the State ceiling shall not be exempt from tax under section 103(a) unless the public official responsible for such allocation certifies under penalties of perjury that such private activity bond was not allocated a portion of the private activity bond limit in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign. Section 1.103(n)-5T specifies the requirements for making this certification.

#### Format

These temporary regulations are presented in the form of questions and answers. The questions and answers are not intended to address comprehensively the issues raised by section 103(n). Taxpayers may rely for guidance on these questions and answers, which the Internal Revenue Service will follow in resolving issues arising under section 103(n). No inference, however, should be drawn regarding questions not expressly raised and answered.

### Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required.

### Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

### Paperwork Reduction Act

The collection of information requirements contained in these regulations has been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545-0874.

### Drafting Information

The principal author of these temporary regulations is Mitchell H. Rapaport of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance, and style.

### List of Subjects in 26 CFR 1.61-1 Through 1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

### Amendments to the Regulations

For the reasons set out in the preamble, Part 1 of Title 26 of the Code of Federal Regulations is amended to read as follows:

#### PART 1—[AMENDED]

New §§ 1.103(n)-1T through 1.103(n)-6T are added following § 1.103-16 to read as follows:

#### § 1.103(n)-1T Limitation on aggregate amount of private activity bonds.

Q-1: What does section 103(n) provide?

A-1: Interest on an issue of private activity bonds will not be tax exempt unless the aggregate amount of bonds issued pursuant to that issue, when added to (i) the aggregate amount of private activity bonds previously issued by the issuing authority during the calendar year and (ii) the portion of that year's private activity bond limit that

the issuing authority has elected to carry forward to a future year, does not exceed the issuing authority's private activity bond limit for that calendar year. See A-4 of § 1.103(n)-4T with respect to private activity bonds issued under a carryforward election.

Q-2: What is the effective date of section 103(n)?

A-2: In general, section 103(n) applies to private activity bonds issued after December 31, 1983. Section 103(n) does not apply to any issue of obligations, however, if there was an inducement resolution (or other comparable preliminary approval) for the project before June 19, 1984, and the issue for such project is issued before January 1, 1985. An issue of obligations will be considered to be issued for the project pursuant to the inducement resolution in existence before June 19, 1984, to the extent that the nature, character, and purpose of the facility has not changed in any material way, and to the extent that the capacity of the facility has not increased materially; in addition, the issue of obligations must be for the same or a related initial owner, manager, or operator. See § 1.103-10(e) for the definition of related persons. See A-16 of § 1.103(n)-3T with respect to certain projects preliminarily approved before October 19, 1983. The transitional rules provided by section 631(c) of the Tax Reform Act of 1984 do not apply to section 103(n). See § 1.103-13(b)(6) for the rules relating to the date of issue of obligations.

Q-3: If an issue of private activity bonds causes the issuer's private activity bond limit to be exceeded, what is the effect on that issue?

A-3: If an issue of private activity bonds causes the issuing authority's private activity bond limit to be exceeded, no portion of that issue will be treated as obligations described in section 103(a), and interest paid on the issue will be subject to Federal income taxation.

Q-4: If an issue of private activity bonds causes the issuer's private activity bond limit to be exceeded, what is the effect on previous issues of private activity bonds that met the requirements of section 103(n) when issued?

A-4: Private activity bonds issued as part of an issue that met the private activity bond limit when issued continue to meet the requirements of section 103(n) even though a subsequent issue causes the aggregate amount of private activity bonds issued by an issuing authority to exceed the authority's private activity bond limit for the calendar year.

*Example.* The following example illustrates the provisions of A-3 and A-4 of this § 1.103(n)-1T:

*Example.* The State ceiling for State Z for 1986 is \$200 million. City M, within the State, and State Z itself are authorized to issue private activity bonds. Under the allocation formula provided by the Governor of State Z, City M has a private activity bond limit of \$50 million; the balance of the State ceiling is allocated to State Z. On June 1, 1986, City M issues a \$75 activity bonds. On September 1, 1986, State Z issues a \$150 million issue of private activity bonds. Based on these facts, the obligations of City M do not meet the requirements of section 103(n) since the aggregate amount of private activity bonds issued by City M in 1986 exceeded its private activity bond limit for such year; thus, such obligations are not described in section 103(a). That the State Z issue caused the aggregate amount of private activity bonds issued in the State during 1986 to exceed the State ceiling does not cause such obligations to fail to meet the requirements of section 103(n).

Q-5: What is the aggregate amount of private activity bonds issued as part of an issue?

A-5: The aggregate amount of private activity bonds issued as part of an issue is the face amount of the issue.

#### § 1.103(n)-2T Private activity bond defined.

Q-1: What is the definition of the term "private activity bond"?

A-1: In general, for purposes of §§ 1.103(n)-1T through 1.103(n)-6T, the term "private activity bond" means any industrial development bond or student loan bond the interest on which is exempt from tax under section 103(a) (without application of section 103(n)). See § 1.103-7(b) for the definition of the term "industrial development bond." See A-17 of this § 1.103(n)-2T for the definition of the term "student loan bond." There are five exceptions to the general definition of the term "private activity bond"; the exceptions include the exception for the Texas Veterans' Bond Program, the residential rental property exception, the exception for certain facilities described in section 103(b)(4) (C) or (D), and the refunding obligation exception. These exceptions are described in A-2 through A-16 of this § 1.103(n)-2T. In addition, the term "private activity bond" does not include any issue of obligations if there was an inducement resolution (or other comparable preliminary approval) for the project before June 19, 1984, and the issue for that project is issued before January 1, 1985. See A-2 of § 1.103(n)-1T.

Q-2: To which obligations does the exception for the Texas Veterans' Bond Program apply?

A-2: The term "private activity bond" does not include general obligation bonds issued under the Texas Veterans' Bond Program if the proceeds of the issue, other than an amount that is not a major portion of the proceeds, are used to make loans of up to \$20,000 for the purchase of land for purposes authorized by such program as in effect on June 19, 1984. The use of the proceeds may be established by the affidavit of the veteran receiving the loan. For purposes of this exception to the definition of the term "private activity bond," the use of more than 25 percent of the proceeds of an issue of obligations will constitute the use of a major portion of such proceeds.

Q-3: To which obligations does the residential rental property exception apply?

A-3: The term "private activity bond" does not include any obligation issued to provide projects for residential rental property (including property functionally related and subordinate to any such facility), as described in section 103(b)(4)(A) and § 1.103-8(b). In addition, the term "private activity bond" does not include any housing program obligation under section 11(b) of the United States Housing Act of 1937.

Q-4: To which obligations does the exception for certain facilities described in section 103(b)(4) (C) or (D) apply?

A-4: Section 103(n)(7)(C) provides that the term "private activity bond" does not include any obligation issued as part of an issue to provide convention or trade show facilities, as described in section 103(b)(4)(C) and § 1.103-8(d) (including property functionally related and subordinate to any such facilities), if the property so described is owned by, or on behalf of, a governmental unit. In addition, the term "private activity bond" does not include any obligation issued as part of an issue to provide airports, docks, wharfs, mass commuting facilities, or storage or training facilities directly related to any of the foregoing facilities, as described in section 103(b)(4)(D) and § 1.103-8(e) (including property functionally related and subordinate to any such facilities), if the property so described is owned by, or on behalf of, a governmental unit. See § 1.103-8(a)(3), in general, for the definition of the term "functionally related and subordinate." For purposes of this exception to the definition of the term "private activity bond," the term "mass commuting facilities" includes "qualified mass commuting vehicles," as defined in section 103(b)(9), that are associated with a mass commuting facility described in § 1.103-8(e)(2)(iv). Obligations issued as part of an issue to

provide parking facilities, as described in section 103(b)(4)(D), are not excepted from the definition of the term "private activity bond;" however, parking facilities may be functionally related and subordinate to another facility described in section 103(b)(4) (C) or (D).

Q-5: When is property described in section 103(b)(4) (C) or (D) owned by, or on behalf of, a governmental unit?

A-5: In general, property described in section 103(b)(4) (C) or (D) will be considered to be owned by a governmental unit if a governmental unit is the owner of the property for Federal income tax purposes generally. See A-5 of § 1.103(n)-3T for the definition of the term "governmental unit". In general, property described in section 103(b)(4) (C) or (D) will be considered to be owned on behalf of a governmental unit if a constituted authority empowered to issue obligations on behalf of a governmental unit is the owner of the property for Federal income tax purposes generally. Whether the property is owned by, or on behalf of, a governmental unit will be determined on the basis of the facts and circumstances of each particular case. The fact that the governmental unit's or constituted authority's obligation to pay principal and interest on an obligation is limited to revenues from fees collected from users of the property provided with the proceeds of such obligation will not, in itself, cause such property to be treated as not owned by, or on behalf of, the governmental unit. In order to qualify for the exception described in section 103(n)(7)(C), the property must be owned by, or on behalf of, the governmental unit throughout the term of the issue. See A-10 of this § 1.103(n)-2T with respect to the consequences of a transfer of ownership.

O-6: Will property described in section 103(b)(4) (C) or (D) that is leased to a non-governmental entity be treated as owned by, or on behalf of, a governmental unit if the lessee is the owner of the property for Federal income tax purposes generally solely by reason of the length of the lease?

A-6: If property, or any portion thereof, is leased to a non-governmental entity and if, for Federal income tax purposes generally, the lessee is the owner of the property solely by reason of the length of the lease, then, for purposes of §§ 1.103(n)-1T through 1.103(n)-6T (but not for other Federal income tax purposes, such as whether payments under the lease constitute deductible rental payments), the governmental unit will be treated as the owner of the property if the lessee elects not to claim depreciation or an investment credit with respect to such

property. See A-7 of this § 1.103(n)-2T for the rules describing the method of making this election. For purposes of §§ 1.103(n)-1T through 1.103(n)-6T, the term "non-governmental entity" means a person other than a governmental unit or a constituted authority empowered to issue obligations on behalf of a governmental unit. The fact that a non-governmental entity lessee elects not to claim depreciation or an investment credit with respect to property does not, however, ensure that the property will be treated as owned by, or on behalf of, a governmental unit for purposes of §§ 1.103(n)-1T through 1.103(n)-6T. Thus, for example, if the lessee is the owner of the property for Federal income tax purposes generally other than solely because of the length of the lease, the obligations issued as part of the issue are private activity bonds notwithstanding that the lessee elected not to claim depreciation or an investment credit with respect to the property.

Similarly, even if a governmental unit is the owner of property for Federal income tax purposes generally, the property will not be treated as owned by, or on behalf of, a governmental unit for purposes of §§ 1.103(n)-1T through 1.103(n)-6T if the lease under which such property is leased to a non-governmental entity provides for significant front end loading of rental accruals or payments. See A-12 of this § 1.103(n)-2T with respect to significant front end loading of rental accruals or payments.

Q-7: What must a lessee do in order to elect not to take depreciation or an investment credit with respect to property described in section 103(b)(4) (C) or (D)?

A-7: The lessee must make the election at the time the lease is executed. The election must include a description of the property with respect to which the election is being made; the name, address, and TIN of the issuing authority; the name, address, and TIN of the lessee; and the date and face amount of the issue the proceeds of which are to be used to provide the property. The election must be signed by the lessee, if a natural person, or by a duly authorized official of the lessee. The issuing authority must be provided with a copy of the election. The issuing authority and the lessee must retain copies of the election in their respective records for the entire term of the lease. In addition, the lease, and any publicly recorded document recorded in lieu of such lease, must state that neither the lessee nor any successor in interest under the lease may claim depreciation or an

investment credit with respect to such property. This election may be made with respect to property whether or not such property otherwise would be eligible for depreciation or an investment tax credit. See section 7701(a)(41) for the definition of the term "TIN."

**Q-8:** Is the election not to claim depreciation or an investment credit revocable?

**A-8:** No, the election is irrevocable. In addition, the election is binding on all successors in interest under the lease regardless of whether the obligations remain outstanding. If a successor in interest claims depreciation or an investment credit with respect to property for which such an election has been made, such property will be considered transferred to a non-governmental entity. See A-10 of this § 1.103(n)-2T with respect to the consequences of such a transfer.

**Q-9:** Where obligations are issued to provide all or any portion of a facility described in section 103(b)(4) (C) or (D), must all of the property described in section 103(b)(4) (C) or (D) that is part of such facility be owned by, or on behalf of, a governmental unit in order for such obligations to qualify for the exception to the definition of the term "private activity bond" provided in section 103(n)(7)(C)?

**A-9:** Generally, yes. If obligations are issued to provide all or any portion of a facility described in section 103(b)(4) (C) or (D), the obligations comprising such issue will not qualify for the exception to the definition of the term "private activity bond" provided in section 103(n)(7)(C) unless all of the property described in section 103(b)(4) (C) or (D) that is part of (or functionally related and subordinate to) the facility being financed is owned by, or on behalf of, a governmental unit throughout the term of the issue. For this purpose, the facility being financed will be construed to include the entire airport, dock, etc., under consideration and not merely the part of the facility being provided with the proceeds of the issue. For example, the term facility, when used in reference to an airport, will be considered to include all property that is part of, or included in, that airport under § 1.103-8(e)(2)(ii)(a), including all property functionally related and subordinate thereto under § 1.103-8(a)(3) and (e)(2)(ii)(b). Thus, if the proceeds of an issue are used to provide a hangar at an airport described in section 103(b)(4)(D), that airport is considered as being financed with such issue, and if any portion of that airport, including property functionally related and subordinate thereto, is treated as owned

by a non-governmental entity, that issue does not qualify for the exception of the definition of the term "private activity bond" provided in section 103(n)(7)(C).

There are three exceptions to this rule, however. First, if any property otherwise would be considered part of the facility financed and such property was not provided with proceeds of any obligation described in section 103(a), such property will not be considered part of the facility being financed.

Second, if any property otherwise would be considered part of the facility being financed and such property was part of such facility on or before October 5, 1984, such property will not be considered part of the facility being financed. For this purpose, property will be considered part of the facility on or before October 5, 1984, if any person was under a binding contract to acquire or construct such property to be a part of such facility on October 5, 1984.

Third, property will not be considered part of the facility being financed if such property (i) is land, a building, a structural component of a building, or other structure (other than tangible personal property (other than an air conditioning or heating unit)) and such property is not physically supported by, does not physically support, and is not physically connected to any property provided with the proceeds of obligations that qualify for the exception to the definition of the term "private activity bond" provided in section 103(n)(7)(C), or (ii) is tangible personal property (other than an air conditioning or heating unit). For this purpose, contiguous parcels of land will not be considered to support, to be supported by, or to be physically connected to each other, and insignificant physical connections (such as a connection by a sidewalk) will be disregarded. For purposes of this A-9, the term "tangible personal property" shall have the meaning given to it under section 48(a)(1)(A) and § 1.48-1(c).

**Examples.** The following examples illustrate the provisions of A-9 of this § 1.103(n)-2T:

**Example (1).** On January 1, 1986, Governmental Unit M issues industrial development bonds to provide an airport, as described in section 103(b)(4)(D), which will consist of land, runways, a terminal and a functionally related and subordinate hotel. The hotel will be leased to N, a non-governmental entity. The lease does not call for significant front end loading of rental accruals or payments. For Federal income tax purposes generally, M will own the entire airport except that N will be the owner of the hotel solely by reason of the length of the lease. N properly elects not to claim depreciation of an investment credit with respect to the hotel. The industrial

development bonds are not private activity bonds.

**Example (2).** The facts are the same as in Example (1) except that N does not make the election and claims depreciation with respect to the hotel. The entire issue of industrial development bonds is treated as an issue of private activity bonds.

**Example (3).** The facts are the same as in Example (2) except that the hotel is provided other than with the proceeds of an obligation described in section 103(a). The issue for the remainder of the airport qualifies for the exception to the definition of the term "private activity bond" provided in section 103(n)(7)(C).

**Example (4).** The facts are the same as in Example (2) except that the hotel, including the hotel parking lot, the hotel grounds, and the parcel of land on which they rest, are provided with a separate issue of industrial development bonds. There are no significant connections between the hotel and the airport. The issue for the hotel is an issue of private activity bonds. The issue for the remainder of the airport qualifies for the exception to the definition of the term "private activity bonds" provided in section 103(n)(7)(C).

**Example (5).** The facts are the same as Example (4) except that the hotel is constructed upon land provided with the proceeds of the issue used to provide the remainder of the airport. Both issues are treated as issues of private activity bonds.

**Example (6).** On June 30, 1983, construction began on the City NN airport, which consists of land, runways, a terminal, and hangars. Corporation XX (a non-governmental entity) owns for Federal income tax purposes generally several of the hangars, which it financed with obligations described in section 103(a) issued on June 30, 1983. On March 1, 1985, at a time when XX still owns the hangars, City NN issues an issue of obligations described in section 103(b)(4)(D) to enlarge the terminal at the City NN airport. City NN will own the addition to the terminal for Federal income tax purposes generally. The obligations comprising the March 1, 1985, issue will not be private activity bonds.

**Q-10:** What are the consequences if a governmental unit ceases to be treated as owning property described in section 103(b)(4) (C) or (D) where the property was provided by obligations that were not private activity bonds on the date of issue due to the exception provided in section 103(n)(7)(C)?

**A-10:** The obligations outstanding on the date such ownership ceases are private activity bonds and are treated as if they are the last private activity bonds issued by the issuer in the calendar year in which the transfer of ownership occurs. Thus, if the aggregate amount of bonds issued pursuant to such issue, when added to the aggregate amount of the other private activity bonds actually issued or treated as issued under this A-10 by the issuer during such year and the amount of any carryforward

elections made during the year, exceeds the issuer's private activity bond limit for such year, the obligations are not described in section 103(a) as of the date on which transfer of ownership occurs; if such obligations do not comply with the requirements of section 103(n), the obligations will be treated as not described in section 103(a) as of the date such ownership ceases. However, if on the date of issue the issuer intended to transfer ownership of such property to a non-governmental entity during the term of the issue, then the obligations are treated as the last private activity bonds actually issued or treated as issued under this A-10 by the issuer during the year in which such obligations were actually issued; if such obligations do not comply with the requirements of section 103(n), the obligations will be treated as not described in section 103(a) as of the date of issue. The exception to the definition of the term "private activity bond" for facilities described in section 103(b)(4) (C) and (D) only applies if the property is owned by, or on behalf of, a governmental unit while all or any part of the issue or any refunding issue remains outstanding.

If all or a portion of the property is sold to a non-governmental entity for its fair market value and all of the proceeds from the sale (except for a de minimis amount less than \$5,000) are used within six months to redeem outstanding obligations, the obligations will not be treated as private activity bonds.

**Q-11:** What are the consequences if private activity bonds are issued to provide additions to a facility that was provided with obligations that were not private activity bonds when issued by virtue of the exception provided in section 103(n)(7)(C) and such additions are not treated as owned by a governmental unit?

**A-11:** In order to qualify for the exception to the definition of the term "private activity bond" for obligations described in section 103(b)(4) (C) or (D), all of the property described in section 103(b)(4) (C) or (D) that is part of the facility provided with the proceeds generally must be owned by, or on behalf of, a governmental unit. See A-9 of this § 1.103 (n)-2T. However, if the proceeds of an issue of private activity bonds are used to make additions to a facility (other than additions that are not considered to be part of the facility under A-9 of this § 1.103(n)-2T) that was provided with another issue of industrial development bonds that were not private activity bonds when issued by virtue of the exception provided in section 103(n)(7)(C), then the prior issue will not cease to qualify for that

exception. Nevertheless, for purposes of determining the aggregate amount of private activity bonds issued during the year that the issue to provide the addition to the previously financed facility is issued, the portion of the prior issue outstanding on the date of issue of the issue to provide the addition will be treated as part of the issue to provide the addition.

*Example.* The following example illustrates the provisions of A-11 of this § 1.103 (n)-2T:

*Example.* On March 1, 1986, City P issues a \$100 million issue of industrial development bonds to provide an airport, as described in section 103(b)(4)(D). City P uses substantially all of the proceeds to acquire land and to construct runways and a terminal on that land. No other property is constructed on the land. City P is the owner of the land and the terminal for Federal income tax purposes generally. Thus, the obligations comprising the March 1, 1986, issue are not private activity bonds when issued. On September 1, 1988, City P leases a portion of the land adjacent to the terminal to Corporation V (a non-governmental entity) under a true lease for Federal income tax purposes. City P's private activity bond limit for 1988 is \$100 million, and as of September 30, 1988, City P has not issued any private activity bond during 1988. On September 30, 1988, City P issues a \$20 million issue of industrial development bonds, the proceeds of which are to be used to construct a hotel that is functionally related and subordinate to the airport. The hotel is to be constructed on the land that P leased to Corporation V. The hotel will be owned by Corporation V for Federal income tax purposes generally. On September 30, 1988, the outstanding face amount of the March 1, 1986, issue is \$100 million. Although the obligations comprising the March 1, 1986, issue will not become private activity bonds as a result of the subsequent issue, on September 30, 1988, City P is treated as issuing a \$120 million issue of private activity bonds. Since that amount exceeds City P's private activity bond limit, the \$20 million issue of private activity bonds issued on September 30, 1988, does not meet the requirements of section 103(n). In addition, any subsequent issuance of private activity bonds by City P during 1988 will fail to meet the requirements of section 103(n). The March 1, 1986, issue continues to be described in section 103(a).

**Q-12:** Section 103(n)(7)(C)(iv) provides that the exception for certain facilities described in section 103(b)(4) (C) or (D) shall not apply in any case where the facility is leased under a lease that has significant front end loading of rental accruals or payments. What does "significant front end loading of rental accruals or payments" mean?

**A-12:** Where a lease requires rental payments that are significantly higher in the early years of the lease than in later years, the lease calls for significant front end loading of rental accruals or payments. A lease that provides for flat

rental payments during the entire lease term does not violate the prohibition against significant front end loading of rent. In addition, a lease may provide for adjustments in rent for inflation or deflation, provided that such adjustments are to be made on the basis of a generally recognized price index. In addition, a lease may provide that rental payments are to be determined, in whole or part, based on a percentage of income, production, etc., provided that the percentage rate is kept constant (or increases) over the term of the lease and that the threshold, if any, above which the percentage applies is kept constant (or decreases) over the term of the lease. Thus, for example, a lease that requires rental payments throughout the term of the lease of \$100,000 per year plus 5 percent of the gross income from the facility in excess of \$500,000 does not violate the prohibition against significant front end loading of rent.

*Examples.* The following examples illustrate the provisions of A-4 through A-12 of this § 1.103(n)-2T:

*Example (1).* On February 1, 1985, County Z issues obligations with a term of 30 years. Substantially all of the proceeds of the obligations are to be used to provide a trade show facility as described in section 103(b)(4)(C). Z leases the entire facility to Corporation S. For Federal income tax purposes generally, S is treated as the owner of the facility solely by reason of the length of the lease. The lease provides that the lessee will elect not to claim depreciation or an investment credit with respect to the facility and that S will provide Z with a copy of the election. S makes the election, retains it in its records, and provides County Z with a copy. The lease provides that neither the lessee nor any successor in interest will claim a deduction for depreciation or an investment credit with respect to such facility. The obligations are not private activity bonds on the date of issue, provided that the lease does not call for significant front end loading of rental accruals or payments.

*Example (2).* The facts are the same as in Example (1) except that on February 1, 1986, S assigns the lease to Corporation T. For its taxable year ending March 31, 1986, Corporation T claims depreciation with respect to the trade show facility. The obligations outstanding on the date Corporation T claims depreciation on its Federal income tax return are treated as the last private activity bonds actually issued or treated as issued by County Z during 1986, and such obligations must comply with the requirements of section 103(n). In addition, Corporation T is not entitled to claim depreciation or an investment credit with respect to the trade show facility during the balance of the term of the lease and will be subject to the applicable penalties for so claiming depreciation.

*Example (3).* The facts are the same as in Example (1) except that the obligations are redeemed on January 31, 1998; on January 31,

1999, S assigns the lease to Corporation X; and on its Federal income tax return for calendar year 1999, Corporation X claims depreciation with respect to the facility. The obligations are not private activity bonds provided that the lease does not call for significant front end loading of rental accruals or payments. However, X is not entitled to claim depreciation or an investment credit with respect to the trade show facility during the balance of the term of the lease and will be subject to the applicable penalties for so claiming those items.

**Q-13:** To which obligations does the refunding obligation exception apply?

**A-13:** The term "private activity bond" does not include any refunding obligation to the extent specified in this A-13. The term "refunding obligation" means an obligation that is part of an issue of obligations the proceeds of which are used to pay any principal or interest on any other issue of obligations described in section 103(a) (referred to as the prior issue). The term "refunding obligation" does not include any obligations issued more than 180 days before the prior issue is discharged ("advance refundings"). The exception for refunding obligations only applies to the extent that the aggregate amount of the refunding issue does not exceed the outstanding face amount of the prior issue, or portion thereof, being refunded. Thus, for example, in the case of an obligation part of the proceeds of which are to be used to refund a prior issue of private activity bonds and part of the proceeds of which are to be used to provide a pollution control facility under section 103(b)(4)(F), those proceeds to be used to refund all or any part of the principal amount of the prior issue are not the proceeds of a private activity bond; the balance of the proceeds are the proceeds of a private activity bond. The refunding obligation exception does not apply to obligations to the extent that amounts are used to pay the costs of issuing refunding obligations. If an issue of obligations consists of both obligations that qualify for the refunding obligation exception and private activity bonds that do not meet the requirements of section 103(n), the entire issue is treated as consisting of obligations not described in section 103(a).

**Q-14:** Does the refunding obligation exception apply to obligations issued to refund a prior issue of student loan bonds?

**A-14:** In the case of any student loan bond, the refunding obligation exception applies only if, in addition to the requirements stated in A-13 of this § 1.103(n)-2T, the maturity date of the funding obligation is not later than the later of (i) the maturity date of the obligation to be refunded, or (ii) the date

17 years after the date on which the refunded obligation was issued (or, in the case of a series of refundings, the date on which the original obligation was issued).

**Q-15:** What is the "maturity date" of an obligation?

**A-15:** For purposes of section 103(n), the "maturity date" of an obligation is the date on which interest ceases to accrue and the obligation may either be paid or redeemed without penalty. The date is determined without regard to optional redemption dates (including those at the option of holders). If the issuer is required by the obligations or the indenture to redeem portions of obligations or to make payments of principal with respect to obligations in specified amounts and at specified times, such mandatory redemptions or payments shall be treated as separate obligations.

**Q-16:** Where private activity bonds are refunded with other obligations described in section 103(a), does the refunding obligation exception apply to the extent that the aggregate amount of the refunding obligations exceeds the outstanding principal amount of the prior issue due to the use of a portion of the proceeds of the refunding issue to fund a reasonably required reserve or replacement fund?

**A-16:** Whether the prior issue was issued prior to January 1, 1984, or thereafter, the refunding obligation exception to the definition of the term "private activity bond" only applies to the extent that the aggregate amount of the refunding obligation does not exceed the outstanding principal amount of the prior issue. Thus, the additional obligations issued to provide for a reasonably required reserve or replacement fund are private activity bonds.

**Q-17:** What is a "student loan bond"?

**A-17:** The term "student loan bond" means an obligation that is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly to finance loans to individuals for educational expenses. For purposes of this A-17, the use of more than 25 percent of the proceeds of an issue of obligations to finance loans to individuals for educational expenses will constitute the use of a major portion of such proceeds in such manner.

#### § 1.103(n)-3T Private activity bond limit.

**Q-1:** What is the "State ceiling"?

**A-1:** In general, the State ceiling applicable to each State and the District of Columbia for any calendar year prior to 1987 shall be the greater of \$200 million or an amount equal to \$150 multiplied by the State's (or the District

of Columbia's) population. In the case of any territory or possession of the United States, the State ceiling for any calendar year prior to 1987 shall be an amount equal to \$150 multiplied by the population of such territory or possession. In the case of calendar years after 1986, the two preceding sentences shall be applied by substituting "\$100" for "\$150." In the case of any State that had an excess bond amount for 1983, the State ceiling for calendar year 1984 shall be the sum of the State ceiling determined under the general rule plus 50 percent of the excess bond amount for 1983. The excess bond amount for 1983 is the excess (if any) of (i) the aggregate amount of private activity bonds issued by issuing authorities in such State during the first 9 months of calendar year 1983 multiplied by  $\frac{1}{2}$ , over (ii) the State ceiling determined under the general rule for 1984. For purposes of determining the State ceiling amount applicable to any any State for calendar year 1984, an issuer may rely upon the State ceiling amount published by the Treasury Department for such calendar year. However, an issuer may compute a different excess bond amount for 1983 where the issuer or the State in which the issuer is located has made a more accurate determination of the amount of private activity bonds issued by issuing authorities in the issuer's State during 1983. See A-7 of this § 1.103(n)-3T for rules regarding a State containing constitutional home rule cities.

**Q-2:** What is the private activity bond limit for a State agency?

**A-2:** Under section 103(n)(2) the private activity bond limit for any agency of the State authorized to issue private activity bonds for any calendar year shall be 50 percent of the State ceiling for such year unless the State provides for a different allocation. For this purpose, the State is considered an agency. See, however, A-17 of this § 1.103(n)-3T with respect to the penalty for failure to comply with the requirements of section 631(a)(3) of the Tax Reform Act of 1984.

**Q-3:** How is private activity bond limit determined where a State has more than one agency?

**A-3:** If any State has more than one agency (including the State) authorized to issue private activity bonds, all such agencies shall be treated as a single agency for purposes of determining the aggregate private activity bond limit available for all such agencies. Each of the State agencies is treated as having jurisdiction over the entire State. Therefore, under A-8 of this § 1.103(n)-3T the aggregate private activity bond

limit for all the State agencies is allocated to the State since it possesses the broadest sovereign powers of any of the State agencies. Each other State agency's private activity bond limit is zero until it is assigned part of the private activity bond limit of another governmental unit pursuant to these regulations.

Q-4: What is a State agency?

A-4: A State agency is an agency authorized by a State to issue private activity bonds on behalf of the State. In addition, a special purpose governmental unit that derives its sovereign powers from the State and may exercise its sovereign powers throughout the State is a State agency. See A-5 of this § 1.103(n)-3T for the definition of the term "special purpose governmental unit." The term "State agency" does not include issuing authorities empowered by a State at the request of another governmental unit within the State to issue private activity bonds to provide facilities within the jurisdiction of such other governmental unit. For example, if County O requests the legislature of State P to create an issuing authority empowered to issue obligations to provide pollution control facilities in County O, the authority is not a State agency.

*Examples.* The following examples illustrate the provisions of A-3 and A-4 of this § 1.103(n)-3T:

*Example (1).* For 1987 State Q has a State ceiling of \$200 million. Neither the Governor nor the legislature of State Q has provided a formula for allocating the State ceiling different from that provided by section 103(n) (2) and (3). State Q has authorized the following State agencies to issue private activity bonds on its behalf: Authority M, Authority N, and Authority O. The aggregate private activity bond limit available for State agencies of State Q is \$100 million. As of January 1, 1987, none of this aggregate private activity bond limit has been assigned to any of Authorities M, N, or O. On January 1, 1987, Authority M issues \$25 million of private activity bonds. During 1987, the duly authorized official designated by State Q to allocate the aggregate private activity bond limit among the three authorities does not allocate any of the State's private activity bond limit to Authority M. The January 1, 1987, issue does not meet the requirements of section 103(n) since Authority M has no private activity bond limit for 1987.

*Example (2).* Under the laws of State U, only the State legislature can create constituted authorities empowered to issue private activity bonds on behalf of governmental units within State U. Authority R was created by the State U legislature at the request of County X. Authority R is a constituted authority empowered to issue private activity bonds on behalf of County X to provide facilities located in County X. Authority S was created by the legislature to issue private activity bonds to provide

pollution control facilities throughout the State. Authority S is a State agency as defined in A-4 of this § 1.103(n)-3T. Authority R it is not a State agency.

Q-5: What is a governmental unit?

A-5: The term "governmental unit" has the meaning given such term by § 1.103-1. For purposes of §§ 1.103(n)-1T through 1.103(n)-6T, a governmental unit is either a general purpose governmental unit or a special purpose governmental unit. The term "general purpose governmental unit" means a State, territory, possession of the United States, the District of Columbia, or any general purpose political subdivision thereof. The term "general purpose political subdivision" denotes any division of government that possesses the right to exercise police powers, the power to tax, and the power of eminent domain and that is governed, at least in part, by popularly elected officials (e.g., county, city, town, township, parish, village). The term "special purpose governmental unit" means any governmental unit as defined in § 1.103-1 other than a general purpose governmental unit. For example, a sewer authority with the power of eminent domain but without police powers is a special purpose governmental unit. A constituted authority empowered to issue private activity bonds on behalf of a governmental unit is not a governmental unit.

Q-6: What is the private activity bond limit for a general purpose governmental unit other than a State, the District of Columbia, a territory, or a possession?

A-6: The private activity bond limit for any such general purpose governmental unit for any calendar year is an amount equal to the general purpose governmental unit's proportionate share of 50 percent of the State ceiling amount for such calendar year. See A-10 of this § 1.103(n)-3T with respect to the rules for providing a different allocation. The proportionate share of a general purpose governmental unit is an amount that bears the same ratio to 50 percent of the State ceiling for such year as the population of the jurisdiction of such general purpose governmental unit bears to the population of the entire State, District of Columbia, territory, or possession in which its jurisdiction falls. See, however, A-17 of this § 1.103(n)-3T with respect to the penalty for failure to comply with the requirements of section 631(a)(3) of the Tax Reform Act of 1984. See A-9 of this § 1.103(n)-3T with respect to the private activity bond limit of issuing authorities other than general purpose governmental units.

Q-7: What is the private activity bond limit for a general purpose governmental

unit in a State with one or more constitutional home rule cities?

A-7: The private activity bond limit for a constitutional home rule city for any calendar year is an amount equal to the constitutional home rule city's proportionate share of 100 percent of the State ceiling amount for the calendar year. The proportionate share of a constitutional home rule city is an amount that bears the same ratio to the State ceiling for such year as the population of the jurisdiction of such constitutional home rule city bears to the population of the entire State. The private activity bond limit for issuers other than constitutional home rule cities is computed in the manner described in A-2 through A-6 of this § 1.103(n)-3T, except that in computing the private activity bond limit for issuers other than such constitutional home rule cities, the State ceiling amount for any calendar year shall be reduced by the aggregate private activity bond limit for all constitutional home rule cities in the State. The term "constitutional home rule city" means, with respect to any calendar year, any political subdivision of a State that, under a State constitution that was adopted in 1970 and effective on July 1, 1971, had home rule powers on the first day of the calendar year. See, however, A-17 of this § 1.103(n)-3T with respect to the penalty for failure to comply with the requirements of section 631(a)(3) of the Tax Reform Act of 1984.

Q-8: How is the private activity bond limit of an issuing authority determined under section 103(n)(3) when there are overlapping jurisdictions?

A-8: If an area is within the jurisdiction of two or more governmental units, that area will be treated as only within the jurisdiction of the governmental unit having jurisdiction over the smallest geographical area. However, the governmental unit with jurisdiction over the smallest geographical area may enter into a written agreement to allocate all or a designated portion of such overlapping area to the governmental unit having jurisdiction over the next smallest geographical area. Where two or more issuing authorities, whether governmental units or constituted authorities, have authority to issue private activity bonds and both issuing authorities have jurisdiction over the identical geographical area, that area will be treated as only within the jurisdiction of the one having the broadest sovereign powers. However, the issuing authority having the broadest sovereign powers may enter into a written agreement to

allocate all or a designated portion of such area to the one with the narrower sovereign powers. All written agreements entered into pursuant to this A-8 must be retained by the assignee in its records for the term of all private activity bonds it issues in each calendar year to which such agreement applies. See A-9 of this § 1.103(n)-3T with respect to the private activity bond limit of issuing authorities other than general purpose governmental units.

Q-9: What is the private activity bond limit of an issuing authority (other than a State agency) that is not a general purpose governmental unit?

A-9: A constituted authority empowered to issue private activity bonds on behalf of a governmental unit is treated as having jurisdiction over the same geographical area as the governmental unit on behalf of which it is empowered to issue private activity bonds. Since a governmental unit has broader sovereign powers than a constituted authority empowered to issue private activity bonds on its behalf, a constituted authority has a private activity bond limit under section 103(n) (2) and (3) of zero. Similarly, a special purpose governmental unit is treated for purposes of section 103(n) as having jurisdiction over the same geographical area as that of the general purpose governmental unit or units from which the special purpose governmental unit derives its sovereign powers. Since a general purpose governmental unit has broader sovereign powers than a special purpose governmental unit, a special purpose governmental unit has a private activity bond limit under section 103(n) (2) and (3) of zero. An issuer of qualified scholarship funding bonds, as defined in section 103(e), is treated for purposes of section 103(n) as issuing on behalf of the State or political subdivision or subdivisions that requested its organization or its exercise of power to issue bonds. See A-13 and A-14 of this § 1.103(n)-3T with respect to assignments of private activity bond limit. For purposes of §§ 1.103(n)-1T through 1.103(n)-6T, a special purpose governmental unit shall be considered to derive its authority from the smallest general purpose governmental unit that—

- (i) Enacts a specific law (e.g., a provision of a State constitution, charter, or statute) by or under which the special purpose governmental unit is created, or
- (ii) Otherwise empowers, approves, or requests the creation of the special purpose governmental unit, or
- (iii) Appoints members to the governing body of the special purpose governmental unit,

and within which general purpose governmental unit falls the entire area in which such special purpose governmental unit may exercise its sovereign powers. If no one general purpose governmental unit meets such criteria (e.g., a regional special purpose governmental unit that exercises its sovereign powers within three counties pursuant to a separate ordinance adopted by each such county), such special purpose governmental unit shall be considered to derive its sovereign powers from each of the general purpose governmental units comprising the combination of smallest general purpose governmental units within which falls the entire area in which such special purpose governmental unit may exercise its sovereign powers and each of which meets (i), (ii), or (iii) above.

Q-10: Does the issue comply with the requirements of section 103 (n) under the following circumstances? Based on the most recent estimate of the resident population of State Y published by the Bureau of the Census before the beginning of 1988, the State ceiling for State Y is \$200 million. Based on the same estimate, the population of City Q is one-fourth of the population of State Y. No part of the geographical area within the jurisdiction of City Q is within the jurisdiction of any other governmental unit with jurisdiction over a smaller geographical area. There are no constitutional home rule cities in State Y. Neither the Governor nor the legislature of State Y has provided a different formula for allocating the State ceiling than that provided by section 103(n) (2) and (3); thus, City Q's private activity bond limit for 1988 is \$25 million ( $.25 \times .50 \times \$200$  million). As of March 1, 1988, City Q has issued \$15 million of private activity bonds during calendar year 1988, none of which were issued pursuant to a carryforward election made in a prior year. On March 1, 1988, City Q will issue \$5 million of private activity bonds to provide a pollution control facility as described in section 103(b)(4) (F). C, a duly authorized official of City Q responsible for issuing the bonds, provides a statement that will be included in the bond indenture or a related document providing that—

- (i) Under section 103(n) (2) and (3) of the Internal Revenue Code, City Q has a private activity bond limit of \$25 million for calendar year 1988 ( $.25 \times .50 \times \$200$  million), none of which has been assigned to it by another governmental unit,
- (ii) State Y has not provided a different method of allocating the State ceiling,
- (iii) City Q has not assigned any portion of its private activity bond limit

to a constituted authority empowered to issue private activity bonds on its behalf, or to any other governmental unit,

(iv) City Q has not elected to carry forward any of its private activity bond limit for 1988 to another calendar year, nor has City Q in any prior year made a carryforward election for the pollution control facility,

(v) The aggregate amount of private activity bonds issued by City Q during 1988 is \$15 million, and

(vi) The issuance of \$5 million of private activity bonds on March 1, 1988, will not violate the requirements of section 103 (n) and the regulations thereunder.

In addition, C provides the certification described in section 103 (n) (12) (A).

A-10: Based on these facts, the issue meets the requirements of section 103(n) and §§ 1.103(n)-1T through 1.103(n)-6T. See § 1.103-13(b)(8) for the definition of the terms "bond indenture" and "related documents."

Q-11: May a State provide a different formula for allocating the state ceiling?

A-11: A State, by law enacted at any time, may provide a different formula for allocating the State ceiling among the governmental units in the State (other than constitutional home rule cities) having authority to issue private activity bonds, subject to the limitation provided in A-12 of this § 1.103(n)-3T. The governor of a State may proclaim a different formula for allocating the State ceiling among the governmental units in such State having authority to issue private activity bonds. The authority of the governor to proclaim a different formula shall not apply after the earlier of (i) the first day of the first calendar year beginning after the legislature of the State has met in regular session for more than 60 days after July 18, 1984, and (ii) the effective date of any State legislation dealing with the allocation of the State ceiling. If, on or before either date, the governor of any State exercises the authority to provide a different allocation, such allocation shall be effective until the date specified in (ii) of the immediately preceding sentence. Unless otherwise provided in a State constitutional amendment or by a law changing the home rule provisions adopted in the manner provided by the State constitution, the allocation of that portion of the State ceiling that is allocated to any constitutional home rule city may not be changed by the governor or State legislature unless such city agrees to such different allocation.

Q-12: Where a State provides an allocation formula different from that

provided in section 103 (n) (2) and (3), which allocation formula applies to obligations issued prior to the adoption of the different allocation formula?

A-12: Where a State provides a different allocation formula, the determination as to whether a particular bond issue meets the requirements of section 103(n) will be based upon the allocation formula in effect at the time such bonds were issued. The amount that may be reallocated pursuant to the later allocation formula is limited to the State ceiling for such year reduced by the amount of private activity bonds issued under the prior allocation formula in effect for such year.

Q-13: May an issuing authority assign a portion of its private activity bond limit to another issuing authority if the governor or legislature has not provided for an allocation formula different from that provided in section 103(n) (2) and (3)?

A-13: Except as provided in this A-13 or in A-8, A-14, or A-15 of this § 1.103(n)-3T, no issuing authority may assign, directly or indirectly, all or any portion of its private activity bond limit to any other issuing authority, and no such attempted assignment will be effective. However, a general purpose governmental unit may assign a portion of its private activity bond limit to (i) a constituted authority empowered to issue private activity bonds on behalf of the assigning governmental unit, and (ii) a special purpose governmental unit deriving sovereign powers from the governmental unit making the assignment. In addition, a State may assign a portion of its private activity bond limit to a constituted authority empowered to issue private activity bonds on behalf of any governmental unit within such State and to any governmental unit within such State. Finally, an issuing authority that is assigned all or a portion of the private activity bond limit of a governmental unit pursuant to the immediately preceding two sentences may assign such amount or any part thereof to the governmental unit from which it received the assignment. None of these permissible types of assignments shall be effective, however, unless made in writing by a duly authorized official of the governmental unit making the assignment and a record of the assignment is maintained by the assignee for the term of all private activity bonds it issues in each calendar year to which such assignment applies. None of these permissible types of assignments shall be effective if made retroactively; provided, however, that retroactive assignments may be made

during 1984. In addition, except as provided in A-15 of this § 1.103(n)-3T, a purported assignment by a governmental unit of a portion of its private activity bond limit to an issuing authority will be ineffective to the extent that private activity bonds issued by such authority provide facilities not located within the jurisdiction of the governmental unit making the assignment, unless the sole beneficiary of the facility is the governmental unit attempting to make the assignment. Similarly, except as provided in A-15 of this § 1.103(n)-3T, a governmental unit may not allocate a portion of its private activity bond limit to an issue of obligations to provide a facility not located within the jurisdiction of that governmental unit unless the sole beneficiary of the facility is the governmental unit attempting to allocate its private activity bond limit to the issue. If an issuing authority issues an issue of obligations a portion of the proceeds of which are to be used to provide a facility not within its jurisdiction other than one described in the immediately preceding sentence, that issue will not meet the requirements of section 103(n) unless an issuing authority within the jurisdiction of which the facility is to be located specifically allocates a portion of its private activity bond limit to such issue equal to the amount of proceeds to be used to provide such facility.

Q-14: May an issuing authority assign a portion of its private activity bond limit to another issuing authority if the governor or legislature has provided for an allocation formula different from that provided in section 103(n) (2) and (3)?

A-14: Yes, under certain conditions. In providing a different formula for allocating the State ceiling, a State may permit an issuing authority to assign all or a portion of its private activity bond limit to other issuing authorities within the State, provided that such assignment is made in writing and a record of that assignment is maintained by the assignee in its records for the term of all private activity bonds it issues in each calendar year to which such assignment applies and a record of that assignment is maintained during such period by the public official responsible for making allocations of the State ceiling to issuing authorities within the State. The preceding sentence will only apply where the different formula expressly permits such assignments. Notwithstanding this A-14, no assignments may be made to regional authorities without compliance with the provisions of A-15 of this § 1.103(n)-3T.

Q-15: May a general purpose governmental unit assign a portion of its private activity bond limit to a regional authority empowered to issue private activity bonds on behalf of two or more general purpose governmental units?

A-15: Yes, under certain conditions. In order for an issue of private activity bonds issued by such a regional authority to meet the requirements of section 103(n), each of the governmental units on behalf of which the regional authority issues private activity bonds must assign to the regional authority a portion of its private activity bond limit based on the ratio of its population to the aggregate population of all such governmental units. The governmental unit within the jurisdiction of which the facility to be provided by the private activity bonds will be located, however, may elect to treat the regional authority as if it were a constituted authority empowered to issue such obligations solely on behalf of that governmental unit and, therefore, may assign a portion of its limit to the authority solely to provide the facility within its jurisdiction. Similarly, if a facility will solely benefit one governmental unit, that governmental unit may make the election described in the preceding sentence. In addition, any of the governmental units on behalf of which the regional authority issues private activity bonds, other than the governmental unit within the jurisdiction of which the facility will be located, may elect to be treated as if it had not empowered the authority to issue that issue of private activity bonds on its behalf. In providing a different formula for allocating the State ceiling, a State may permit a governmental unit to assign all or a portion of its private activity bond limit to a constituted authority empowered to issue private activity bonds on behalf of two or more governmental units, all of which are located within the State. The preceding sentence will only apply where the different formula expressly so provides. The principles of this A-15 shall not apply to any regional authority created with a principal purpose of avoiding the restrictions provided in A-13 or A-14 of this § 1.103(n)-3T. The principles of this A-15 shall also apply to a special purpose governmental unit providing facilities located within the jurisdiction of two or more general purpose governmental units from which it derives sovereign powers.

*Examples.* The following examples illustrate the provisions of A-8 through A-15 of this section:

*Example (1).* Authority ZZ is empowered by City Y to issue obligations on its behalf to

provide financing for pollution control facilities located within the jurisdiction of City Y and the geographical area within 10 miles of the limits of City Y. Authority ZZ has no sovereign powers. Although the authority of Authority ZZ to issue obligations enables it to provide facilities located outside of the jurisdiction of City Y, Authority ZZ is treated as having jurisdiction over the same geographical area as City Y. Since City Y has broader sovereign powers than Authority ZZ, under section 103(n)(3) Authority ZZ has a private activity bond limit of zero. On March 31, 1985, Authority ZZ issues \$5 million of private activity bonds. City Y has not assigned any portion of its private activity bond limit to Authority ZZ. Thus, the March 31, 1985, issue of private activity bonds is treated as an issue of obligations not described in section 103(a), and the interest on such obligations is subject to Federal income taxation.

*Example (2).* In 1972, State S, State T, and State V empowered Authority Z to issue industrial development bonds on behalf of the three States and to provide port facilities in a harbor serving residents of all three States. S, T, and V have populations of 1,000,000, 2,000,000, and 7,000,000, respectively. Authority Z will issue \$100 million of private activity bonds on September 1, 1985, to finance construction of a dock to be located in State S. The obligations will not meet the requirements of section 103(n) unless S, T, and V assign a portion of their private activity bond limits to Authority Z pursuant to one of three methods. First, S, T, and V may assign \$10 million, \$20 million, and \$70 million, respectively, of their private activity bond limits to Authority Z for this issue. Second, S, T, and V may assign \$100 million, \$0, and \$0, respectively, of their private activity bond limits to Authority Z for this issue. Third, either T or V (but not S) may allocate \$0 of its private activity bond limit to Authority Z for purposes of this issue, and the remaining two States may allocate the \$100 million based upon their respective populations. For instance, if T were to allocate \$0 for purposes of this issue, S and V must allocate \$12.5 million and \$87.5 million, respectively, of their private activity bond limits to Authority Z.

**Q-16:** Must an issuing authority allocate any of its private activity bond limit to certain preliminarily approved projects?

**A-16:** Yes. Section 631(a)(3) of the Tax Reform Act of 1984 provides that, with respect to certain projects preliminarily approved by an issuing authority before October 19, 1983, the issuing authority shall allocate its share of the private activity bond limit for the calendar year during which the obligations are to be issued first to those projects. For purposes of this A-16 and A-17 and A-18 of this § 1.103(n)-3T, a general purpose governmental unit will be treated as having preliminarily approved a project if the project was preliminarily approved by it, by a constituted authority empowered to issue private activity bonds on its

behalf, or by a special purpose governmental unit treated as having jurisdiction over the same geographical area as the general purpose governmental unit. Thus, if a project was approved by a constituted authority, the governmental unit on behalf of which such issue is to be issued must assign a portion of its private activity bond limit to the authority pursuant to section 631(a)(3) of the Act. If a project was preliminarily approved by a constituted authority empowered to issue private activity bonds on behalf of more than one general purpose governmental unit or a special purpose governmental unit that derives its sovereign powers from more than one general purpose governmental unit, the project will be considered approved by each of such general purpose governmental units in proportion to their relative populations. The projects that receive priority under section 631(a)(3) of the Act and this A-16 are those with respect to which—

(i) There was an inducement resolution (or other comparable preliminary approval) for a project before October 19, 1983, by an issuing authority,

(ii) A substantial user of the project notified such issuing authority—

(A) By August 17, 1984, that it intended to claim its rights under section 631(a)(3) of the Tax Reform Act of 1984, and

(B) By December 31, 1984, as to the calendar year in which it expects the obligations to provide the project to be issued, and

(iii) Construction of such project began before October 19, 1983, or a substantial user was under a binding obligation on that date to incur significant expenditures with respect to the project.

For purposes of the preceding sentence, the term "significant expenditures" means expenditures that equal or exceed the lesser of \$15 million or 20 percent of the estimated cost of the facilities. An issuing authority may require, as part of the submission required by (ii)(B) of this A-16, that a substantial user specify the aggregate amount of private activity bonds necessary for the project. Section 631(a)(3) does not apply to a project to the extent that the aggregate amount of obligations required for such project exceeds the amount, if any, provided for in the inducement resolution or resolutions in existence with respect to such project before October 19, 1983, or in the statement that may be required by the issuing authority as part of the submission required by (ii)(B) of this A-

16. Similarly, section 631(a)(3) does not apply to a project to the extent of any material change in its nature, character, purpose, or capacity. Section 631(a)(3) does not apply to a project if the owner, operator, or manager of such project is not the same (or a related person) as the owner, operator, or manager named in the latest inducement resolution with respect to such project in existence before October 19, 1983. Section 631(a)(3) of the Act does not apply to any project if the obligations to provide the project are not issued in the year specified in the submission required by (ii)(B) of this A-16. In addition, section 631(a)(3) of the Act does not apply to any project to the extent that the amount of obligations to be issued for such project exceeds the share of the State ceiling to which the issuing authority that authorized the project is entitled as determined under section 103(n) (2) and (3) without regard to any alternative formula for allocating the State ceiling. The requirements of section 631(a)(3) will not apply where a State statute specifically so provides.

**Q-17:** What is the penalty for failure to comply with the requirements of section 631(a)(3) of the Act?

**A-17:** If an issuing authority fails to comply with the requirements of section 631(a)(3) of the Act, its private activity bond limit for the calendar year following the year in which the failure occurs shall be reduced by the amount of private activity bonds with respect to which the failure occurs. This penalty applies whether the issuing authority's private activity bond limit is determined under the formula provided under section 103(n) (2) and (3) or a different formula provided under section 103(n)(6). The penalty is imposed on the issuing authority that failed to comply with the requirements of section 631(a)(3) or, if in the year in which the penalty is imposed the issuing authority does not have a sufficient private activity bond limit to absorb the entire penalty, on the general purpose governmental unit treated as having jurisdiction over the same geographical area as the issuing authority. For purposes of this A-17, the general purpose governmental unit's private activity bond limit includes the private activity bond limit of each issuing authority treated as having preliminarily approved the project under A-16 of this § 1.103(n)-3T. Thus, for example, if a governmental unit failed to comply with the requirements of section 631(a)(3) of the Act with respect to a \$5 million issue to be issued in 1985, and that governmental unit is assigned \$15 million of the State ceiling for 1986

pursuant to a formula provided under section 103(n)(6), that governmental unit has a private activity bond limit of \$10 million for 1986. Similarly, where a project that was preliminarily approved by an issuing authority that is not a governmental unit qualifies for \$10 million of priority under section 631(a)(3) of the Act is not allocated a total of \$10 million by the governmental unit on behalf of which the issuing authority is empowered to issue private activity bonds, the issuing authority's private activity bond limit, if any, for the year following this failure is reduced by \$10 million; if the issuing authority's private activity bond limit for the year following the failure is less than \$10 million, the private activity bond limit of the governmental unit on behalf of which the private activity bonds would have been issued had the failure not occurred (including if necessary, on a proportionate basis, the private activity bond limit purported to have been assigned to each of the other constituted authorities empowered to issue private activity bonds on behalf of the governmental unit and each special purpose governmental unit deriving all or part of its sovereign powers from the governmental unit) is reduced by the difference between \$10 million and the reduction made in the issuing authority's private activity bond limit with respect to such failure.

Q-18: Will a penalty be assessed for failure to allocate private activity bond limit to all projects that meet the requirements section 631(a)(3) if the amount of obligations required by all such projects preliminarily approved by (or treated as having been preliminarily approved by) an issuing authority exceeds the private activity bond limit of such issuing authority?

A-18: No penalty will be assessed if priority is given to those eligible projects for which substantial expenditures were incurred before October 19, 1983. An issuer may define the term "substantial expenditures" in any reasonable manner based on the relevant facts and circumstances and its private activity bond limit.

*Examples.* The following examples illustrate the provisions of A-18 through A-18:

*Example (1).* On October 1, 1983, County S approved an inducement resolution for the issuance of up to \$30 million of industrial development bonds to provide a pollution control facility described in section 103(b)(4)(F) for Corporation R. On October 5, 1983, R contracted with Corporation Q to begin construction of the pollution control facility immediately, and construction began on October 10, 1983. Not later than August 17, 1984, Corporation R notified County S that it intended to seek priority under section

631(a)(3) of the Tax Reform Act of 1984. In addition, prior to December 31, 1984, Corporation R notified County S that it expected the County to issue \$25 million of industrial development bonds for its project during calendar year 1985. Under section 103(n)(3), County S has a private activity bond limit of \$50 million for calendar year 1985, and neither the Governor nor the legislature of the State has provided a different allocation formula under section 103(n)(6). There are no other projects approved by County S that have rights under section 631(a)(3). On March 1, 1985, County S issues \$25 million of industrial development bonds for the pollution control facility for Corporation R. If County S allocates less than \$25 million of its private activity bond limit to that project, its private activity bond limit for 1986 will be reduced by the difference between \$25 million and the amount County S actually allocates to the project.

*Example (2).* The facts are the same as in Example (1) except that during 1984 Corporation R fails to notify County S of the year in which it expects the obligations to be issued. Upon such failure the pollution control facility no longer qualifies for priority under section 631(a)(3), and County S will not be penalized if it does not allocate any of its private activity bond limit for 1985, or any future year, to that project.

*Example (3).* The facts are the same as in Example (1) except that under section 103(n)(3) County S has a private activity bond limit of \$10 million for 1985. County S will not be penalized if it allocates \$10 million of its private activity bond limit to the project.

*Example (4).* The facts are the same as in Example (3) except that on December 31, 1984, the Governor of the State provides a different allocation from that provided under section 103(n) (2) and (3). (The State has not enacted a statute specifically providing that section 631(a)(3) does not apply.) The different allocation provides that the entire State ceiling is allocated to the State and that the State will allocate the State ceiling to issuing authorities for specific projects on a first-come, first-served basis. Corporation R qualifies for the special rights granted by section 631(a)(3) of the Tax Reform Act to the extent of County S's private activity bond limit as determined under section 103(n)(3), i.e., \$10 million. If the State fails to assign to County S \$10 million of the State ceiling or if County S, after receiving such assignment, fails to allocate \$10 million of private activity bond limit to the project, County S's private activity bond limit (if any) for 1986 will be reduced by the difference between \$10 million and the amount of private activity bond limit allocated to the project.

*Example (5).* The facts are the same as in Example (1) except that Corporation R notifies County S that it only requires \$15 million for the pollution control facility, County S only issues \$15 million of private activity bonds for the pollution control facility, and County S only allocates \$15 million of its private activity bond limit to such obligations. County S will not be penalized for not allocating more than \$15 million of its private activity bond limit to Corporation R even though the original

inducement resolution provided for up to \$25 million.

#### § 1.103(n)-4T Elective carryforward of unused private activity bond limit.

Q-1: May an issuing authority carry forward any of its unused private activity bond limit for a calendar year?

A-1: In any calendar year after 1983 in which an issuing authority's private activity bond limit exceeds the aggregate amount of private activity bonds issued during such calendar year by such issuing authority, such issuing authority may elect to treat all, or any portion, of such excess as a carryforward for any one or more projects described in A-5 of this § 1.103(n)-4T (carryforward projects).

Q-2: How is the election to carry forward an issuing authority's unused private activity bond limit made?

A-2: An issuing authority may make the election by means of a statement, signed by a duly authorized public official responsible for making allocations of such issuing authority's private activity bond limit, that the issuing authority elects to carry forward its unused private activity bond limit. The statement shall be mailed to the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255, prior to the end of the calendar year with respect to which the issuing authority has the unused private activity bond limit. The statement is to be titled "Carryforward election under section 103(n)." The statement shall contain the following information:

- (i) The name, address, and TIN of the issuing authority,
- (ii) The issuing authority's private activity bond limit for the calendar year,
- (iii) The aggregate amount of private activity bonds issued by the issuing authority during the calendar year for which the election is being made,
- (iv) The unused private activity bond limit of the issuing authority, and
- (v) For each carryforward project—
  - (A) A description of the project, including its address and the general type of facility (e.g., an airport described in section 103(b)(4)(D)),
  - (B) The name, address, and TIN of the initial owner, operator, or manager, and
  - (C) The amount to be carried forward for the project.

In the case of a carryforward election for the purpose of issuing student loan bonds, the election need not include the address of the facility or the name, address, and TIN of the initial owner, operator, or manager of the project but shall state that the carryforward election is for the purpose of issuing student loan bonds.

Q-3: Is a carryforward election revocable?

A-3: Any carryforward election, and any specification contained therein, shall be irrevocable after the last day of the calendar year in which the election is made. Thus, for example, obligations issued to finance a carryforward project with a different initial owner, operator, or manager from the owner, operator, or manager specified in the carryforward election shall not be issued pursuant to such carryforward election. An insubstantial deviation from a specification contained in a carryforward election shall not prevent obligations from being issued pursuant to such carryforward election. In addition, where a carryforward election is made with respect to more than one carryforward project, a substantial deviation with respect to one carryforward project shall not prevent obligations from being issued pursuant to such carryforward election with respect to the other carryforward projects.

Q-4: How is a carryforward used?

A-4: Any private activity bonds issued during the three calendar years (six calendar years in the case of a project described in section 103(b)(4)(F)) following the calendar year in which the carryforward election was first made with respect to a carryforward project shall not be taken into account in determining whether the issue meets the requirements of section 103(n). If, however, the amount of private activity bonds issued for the carryforward project exceeds the amount of the carryforward elected with respect to the project, then the portion of the issue that exceeds the carryforward shall be taken into account in determining whether the issue meets with the requirements of section 103(n); if that portion of the issue does not meet the requirements of section 103(n) then the entire issue is treated as consisting of obligations not described in section 103(a). Carryforwards elected with respect to any project shall be used in the order of the calendar years in which they arose. Thus, for example, if an issuing authority makes carryforward elections in 1986 and 1988 for a carryforward project and issues private activity bonds for that project in 1989 and 1990, the obligations issued in 1989 will be applied to the 1986 carryforward election to the extent thereof.

Q-5: For what projects may a carryforward election be made?

A-5: A carryforward election may be made for any project described in section 103(b) (4) or (5), and for the purpose of issuing student loan bonds. Thus, for example, an issuing authority

may elect to carry forward its unused private activity bond limit in order to provide a sports facility described in section 103(b)(4)(B). In addition, a governmental unit may elect to carry forward its unused private activity bond limit in order to issue qualified scholarship funding bonds. An issuing authority may not, however, elect to carry forward its unused private activity bond limit in order to issue an exempt small issue of industrial development bonds under section 103(b)(6).

**§ 1.103 (n)-5T Certification of no consideration for allocation.**

Q-1: Who must certify that there was no consideration for an allocation?

A-1: Section 103(n)(12)(A) provides that, with respect to any private activity bond allocated any portion of the State ceiling, the private activity bond will not be described under section 103(a) unless the public official, if any, responsible for such allocation ("responsible public official") certifies under penalties of perjury that to the best of his knowledge the allocation of the State ceiling to that private activity bond was not made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign. With respect to any issue of private activity bonds, the responsible public official is the official or officer of the issuing authority that in fact is responsible for choosing which individual projects will be allocated a portion of the State ceiling. If a body of several individuals is responsible for such choices, any one member of such body qualifies as the responsible public official.

Q-2: What is the penalty for willfully making an allocation in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign?

A-2: Section 103(n)(12)(B) provides that any person willfully making an allocation of any portion of the State ceiling in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign will be subject to criminal penalty as though the allocation were a willful attempt to evade tax imposed by the Internal Revenue Code.

**§ 1.103 (n)-6T Determinations of population.**

Q-1: What is the proper method for determining population?

A-1: All determinations of population must be made with respect to any calendar year on the basis of the most recent census estimate (whether final or provisional) of the resident population of the State or other governmental unit published by the Bureau of the Census

in the "Current Population Reports" series before the beginning of the calendar year.

However, determinations of the population of a general purpose governmental unit (other than a State, territory, or possession) within a State, territory, or possession may not be based on estimates that do not contain estimates for all of the general purpose governmental units within such State, territory, or possession. Thus, a county may not determine its population on the basis of a census estimate that does not provide an estimate of the population of the other general purpose governmental units within the State (e.g., cities, towns). If no census estimate is available for all such general purpose governmental units, the most recent decennial census of population may be relied on.

*Example:* The following example illustrates the provisions of A-1 of this § 1.103(n)-6T:

*Example.* County Q is located within State R. There are no constitutional home rule cities in State R. State R has not adopted a formula for allocating the State ceiling different from the formula provided in section 103(n) (2) and (3). The geographical area within the jurisdiction of County Q is not within the jurisdiction of any other governmental unit having jurisdiction over a smaller geographical area. As of December 31, 1984, the Bureau of the Census has published the following estimates of resident population: "Current Population Reports; Series P-25: Population Estimates and Projections, Estimates of the Population of States: July 1, 1981-1983" and "Current Population Reports; Series P-26: Local Population Estimates: Population of State R, Counties, Incorporated Places, and Minor Civil Divisions: July 1, 1981-1982." The most recent population estimate for State R available prior to 1985 provides population estimates as of July 1, 1983. The most recent population estimates for County Q available prior to 1985 is the estimate for July 1, 1982. Assuming that the State ceiling for State R for 1985 is in excess of \$200 million (i.e., \$150 multiplied by the estimated population of State R as of July 1, 1983, exceeds \$200 million), County Q may determine its private activity bond limit by using the following formula:

$P = \$150 \times .5 \times W \times Y/Z$ , where,  
 P = County Q's private activity bond limit,  
 W = the July 1, 1983, population estimate for State R,  
 Y = the July 1, 1982, population estimate for County Q, and  
 Z = the July 1, 1982, population estimate for State R.

If the State ceiling for State R is not in excess of \$200 million, County Q may determine its private activity bond limit by using the following formula:

$P = \$200,000,000 \times .5 \times Y/Z$ , where  
 P, Y, and Z have the same meaning as above.

There is a need for immediate guidance with respect to the provisions

contained in this Treasury decision. For this reason it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 103(n) and 7805 of the Internal Revenue Code of 1954 (98 Stat. 916, 26 U.S.C. 103(n); 68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: September 14, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84-28507 Filed 10-2-84; 4:22 pm]

BILLING CODE 4830-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Parts 181 and 183

[CGD 83-012]

#### Certification, Safe Loading and Flotation Standards

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** This rule amends the Certification Regulations in Subpart B of Part 181 and the Safe Loading and Flotation Standards in Subparts C, E, G and H of Part 183 of Title 33, Code of Federal Regulations. The Coast Guard undertook a review of its regulations governing construction standards which apply to the manufacture of recreational boats in an effort to reduce the burden of existing regulations without sacrificing safety. Based upon the review effort, several sections have been determined to no longer be necessary, or have limited value in improving boating safety. These amendments revise or remove these sections of the Certification regulations and the Safe Loading and Flotation Standards to relieve the regulatory burden upon recreational boat manufacturers. Changes in the actual weights of currently manufactured outboard motors are reflected in the table used to determine safe loading capacities and the amount of required flotation material and require the installation of additional flotation material in some boats.

**EFFECTIVE DATE:** April 3, 1985, except Table 4 in Subpart H which will be effective July 1, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alston Colihan, Office of Boating,

Public, and Consumer Affairs (G-BBS/43), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, (202) 426-1065, between 8 a.m. and 4 p.m. Monday through Friday, except holidays.

**SUPPLEMENTARY INFORMATION:** The Coast Guard published a notice of proposed rulemaking in the *Federal Register* on April 12, 1984 (49 FR 14538). An extension of the comment period for the notice was published in the *Federal Register* on June 7, 1984 (49 FR 23663). Interested persons were invited to participate in this rulemaking by submitting relevant comments. No comments were received. The National Boating Safety Advisory Council was consulted and its opinions and advice have been considered in the formulation of these amendments. The transcripts of the proceedings of the National Boating Safety Advisory Council at which this rule was discussed are available for examination in Room 4304, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. The minutes of the meetings are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G-BBS), U.S. Coast Guard, Washington, D.C. 20593.

This document is in furtherance of Executive Order No. 12291. It removes those sections of the Certification Regulations in Subpart B of Part 181 and the Safe Loading and Flotation Standards in Subparts C, E, G and H of Part 183 that do not significantly contribute to boating safety.

#### Drafting Information

The principal persons involved in drafting these amendments are Mr. Alston Colihan, Project Manager, Office of Boating, Public, and Consumer Affairs, and LT Sandra Sylvester, Project Attorney, Office of the Chief Counsel.

#### Discussion of Comments

No comments were received on the proposal.

#### Regulatory Evaluation

These regulations are considered to be nonmajor under the provisions of section 2 of Executive Order No. 12291 and are nonsignificant in accordance with the guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of May 22, 1980). The Coast Guard estimates that 2,000 boat models have a rated capacity of more than 550 pounds of persons. The elimination of the requirement for conducting the dry stability test for each of these models will result in an

estimated total savings to the boating industry of \$200,000 per year. The amendments to the Flotation Standard would result in only minor increases in the costs of manufacturing some boats. Using 1982 sales estimates, forty percent of the 236,000 outboard boats manufactured will be subject to an increase in the amount of flotation material required using the new Table 4 in Subpart H. Some boats with low horsepower ratings will require less flotation material because the weights for those motors have decreased. As a result, performing calculations in accordance with the Flotation Standard using the new Table 4 in Subpart H will amount to an average increased cost of \$8.00 per boat.

Since the cost per boat is minimal, in accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is certified that this rule will not have a significant economic impact on a substantial number of small entities. Boat builders have until July 1, 1986 before the change to Table 4 in Subpart H becomes effective and any design modifications necessary to accommodate additional flotation material can be incorporated in normal model year changes within this two year period.

#### List of Subjects in 33 CFR Parts 181 and 183

Marine safety.

In consideration of the foregoing, Parts 181 and 183 of Title 33, Code of Federal Regulations are amended to read as follows:

#### PART 181—MANUFACTURER REQUIREMENTS

1. By removing and reserving § 181.15(c) and revising § 181.15(d) to read as follows:

##### § 181.15 Contents of labels.

\* \* \* \* \*

(c) [Reserved]

(d) Except as provided in paragraph (e) of this section, the manufacturer may, in addition to the information required by paragraphs (a) and (b) of this section, display on the certification label any or all of the following information:

\* \* \* \* \*

#### PART 183—BOATS AND ASSOCIATED EQUIPMENT

2. By revising § 183.39(a) to read as follows:

**§ 183.39 Persons capacity: Inboard and inboard-outdrive boats.**

(a) The persons capacity in pounds marked on a boat that is designed to use one or more inboard engines or inboard-outdrive units for propulsion must not exceed:

(1) The maximum weight capacity determined under § 183.33 for the boat; or

(2) For boats with a maximum persons capacity less than 550 pounds, the maximum persons capacity determined in the following manner:

3. By revising § 183.41(a) to read as follows:

**§ 183.41 Persons Capacity: Outboard boats.**

(a) The persons capacity in pounds

5. Effective July 1, 1986 Table 4 in Subpart H is revised to read as follows:

TABLE 4.—WEIGHTS (POUNDS) OF OUTBOARD MOTOR AND RELATED EQUIPMENT FOR VARIOUS BOAT HORSEPOWER RATINGS

Boat horsepower rating	Motor and control weight		Battery weight		Full portable fuel tank weight	1+3+5
	Dry	Swamped	Dry	Submerged		
	Column No.					
	1	2	3	4	5	6
0.1 to 2.....	25	20				25
2.1 to 3.9.....	40	34				40
4.0 to 7.....	60	52			25	35
7.1 to 15.....	90	82	20	11	50	160
15.1 to 25.....	125	105	45	25	50	220
25.1 to 45.....	170	143	46	25	100	315
45.1 to 60.....	235	195	45	25	100	380
60.1 to 80.....	280	235	45	25	100	425
80.1 to 145.....	405	352	45	25	100	550
145.1 to 275.....	430	380	45	25	100	575
275.1 and up.....	605	538	45	25	100	750
TRANSOMS DESIGNED FOR TWIN MOTORS						
50.1 to 90.....	340	286	90	50	100	530
90.1 to 120.....	470	390	90	50	100	660
120.1 to 160.....	560	470	90	50	100	750
160.1 to 230.....	810	704	90	50	100	1000
230.1 to 550.....	860	760	90	50	100	1050
550.1 and up.....	1210	1076	90	50	100	1400

(46 U.S.C. 4302; 49 CFR 1.46(n)(1))

Dated: August 27, 1984.

A.D. Breed,

Commodore, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 84-26365 Filed 10-4-84; 8:45 am]

BILLING CODE 4910-14-M

**VETERANS ADMINISTRATION****38 CFR Parts 5, 8, 13, and 17****Revocation of Obsolete Regulations**

AGENCY: Veterans Administration.

ACTION: Final rule; Revocation.

SUMMARY: The Veterans Administration is revoking a number of obsolete and

marked on a boat that is designed to use one or more outboard motors for propulsion must not exceed:

(1) The maximum weight capacity determined under § 183.35 for the boat minus the motor and control weight, battery weight (dry), and full portable fuel tank weight from Table 4 of Subpart H of this Part; or

(2) For boats with a maximum persons capacity less than 550 pounds, the maximum persons capacity determined in the following manner:

**Subpart E—Flotation—[Reserved]**

4. Part 183 is amended by removing and reserving Subpart E (§§ 183.61-183.67).

superfluous regulations. The provisions of these regulations have been either incorporated into other regulations or have been made obsolete by subsequently enacted legislation.

EFFECTIVE DATE: September 28, 1984.

FOR FURTHER INFORMATION CONTACT: Nancy C. McCoy, Chief, Directives Management Division, Paperwork Management and Regulations Service (731), Veterans Administration, 810

Vermont Avenue, NW., Washington, DC 20420, (202) 389-2308.

SUPPLEMENTARY INFORMATION: The Veterans Administration is revoking 38 CFR 5.50, 8.185, 8.186, 13.500, 17.951, 17.952 and 17.953. The sections are listed showing current provisions:

Section 5.50 (forfeiture)—superseded by §§ 3.900-3.905.

Sections 8.185 and 8.186 (certain NSLI dividends and premium refunds)—no longer needed.

Section 13.500 (certain disbursements from personal funds of patients)—superseded by § 13.108(b).

Section 17.951 (hospital, domiciliary care and medical treatment)—superseded by §§ 17.31(b)(4), 17.36(b), 17.47(c)(1), 17.60 and 17.115.

Section 17.952 (determination of mental competency of certain members of the Uniformed Services)—no longer needed

Section 17.953 (hospital and medical services for veterans suffering from noncompensable peacetime service-connected disabilities)—superseded by §§ 17.30, 17.47.

The Veterans Administration finds that this action is not included within the term "major rulemaking" as set forth in section 1(a)(3) of Executive Order 12291, Federal Regulation. This action is a purely administrative matter. In addition, this action has no effect under the Regulatory Flexibility Act (15 U.S.C. 601-612).

Under the authority of the Administrator of Veterans Affairs as set forth in 38 U.S.C. 210, sections 5.50, 8.185, 8.186, 13.500, 17.951, 17.952 and 17.953 are hereby revoked and reserved.

Dated: September 28, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 84-26458 Filed 10-4-84; 8:45 am]

BILLING CODE 8320-01-M

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 271**

[WH-FRL-2666-8]

**North Dakota Decision on Final Authorization of State Hazardous Waste Management Program**

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on Application of North Dakota for Final Authorization.

**SUMMARY:** North Dakota has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed North Dakota's application and has reached a final determination that North Dakota's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program in lieu of the Federal program.

**EFFECTIVE DATE:** Final Authorization for North Dakota shall be effective at 1:00 p.m. on October 19, 1984.

**FOR FURTHER INFORMATION CONTACT:** Henry C. Schroeder, EPA/Region 8, 1860 Lincoln Street, Denver, Colorado 80295, Telephone: (303) 844-2221.

**SUPPLEMENTARY INFORMATION:** Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows the Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must (1) be "equivalent" to the Federal program; (2) be consistent with the Federal program and other State programs; and (3) provide for adequate enforcement [Section 3006(b) of RCRA, 42 U.S.C. 6226(b)].

On March 14, 1984, North Dakota submitted a complete application to obtain final authorization to administer the RCRA program. On July 10, 1984, EPA published a tentative decision announcing its intent to grant North Dakota final authorization. Further background on the tentative decision to grant authorization appears at Vol. 49, No. 133, Federal Register, Page 28076, July 10, 1984.

Along with the tentative determination EPA announced the availability of the application for public comment and the date of a public hearing on the application. The public hearing was held on August 14, 1984. Four positive statements were received and no adverse comments.

The tentative determination to authorize the State of North Dakota was made based on North Dakota's commitment to provide additional materials to EPA. The materials were presented and reviewed in time for the public to review, and adequately addressed EPA's prior concerns as follows:

EPA stated that the State statute contains an in existence date for interim status about eight months later than EPA's; July 1, 1981 as opposed to November 19, 1980. This needed to be remedied by changing the date during

the next legislative session or agreeing, in the MOA, to change regulations and permit affected facilities within one year of any new waste listings by EPA.

North Dakota has committed in the MOA to change regulations and permit affected facilities within one year of any new waste listings by EPA. The State Attorney General has certified that the State can make this commitment. This assures that no facility will qualify for interim status under State law for whom a permit would be required under Federal law.

#### Decision

After reviewing the public comment and the changes the State has made to its application/program since the tentative decision, I conclude that North Dakota's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, North Dakota is granted final authorization to operate its hazardous waste program. This means that North Dakota now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program. North Dakota also has primary enforcement responsibility, although EPA retains the right to take enforcement actions under sections 3008, 7003, and 3013 of RCRA.

#### Compliance With Executive Order 12291

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

#### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 505(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Utah's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

#### List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

**Authority:** This notice is issued under the authority of section 2002(a), 3006, and 7004(b)

of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 2, 1984.

John G. Welles,

Regional Administrator.

[FR Doc. 84-26482 Filed 10-4-84; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

43 CFR Parts 3100, 3200, 3470, and 3500

[Circular No. 2554]

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

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rulemaking.

**SUMMARY:** This final rulemaking will amend the existing regulations covering the procedures for collection of bonus and rental payments required in connection with mineral leases issued by the Bureau of Land Management. The final rulemaking will transfer the bonus and rental payments after the payment for the initial year for six categories of lands that were excluded by the final rulemaking that appeared in the Federal Register on March 27, 1984 (49 FR 11636).

**EFFECTIVE DATE:** January 1, 1985.

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

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

**SUPPLEMENTARY INFORMATION:** A final rulemaking which implemented the provisions of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701-1757) and a Memorandum of Understanding between the Bureau of Land Management and the Minerals Management Service dealing with the question of remittances in connection with mineral leases issued by the Bureau of Land Management was published in the Federal Register on March 27, 1984 (49 FR 11636). That final rulemaking required that the bonus and rental remittances made after the initial payment should be made to the Minerals Management Service. The final rulemaking excluded six categories of

lands from this requirement. This exclusion resulted in confusion among lessees as to where they should send their bonus and rental payments. As a result of the concerns expressed by several lessees, the Department of the Interior carefully reexamined the question of the need to have a different payment requirement for the six categories of lands excluded by the final rulemaking of March 27, 1984. It was determined that the bonus and rental remittances on the excluded lands could be paid to the Minerals Management Service. This final rulemaking will require that all bonus and rental remittances made after the initial remittance be made to the Minerals Management Service. Provisions have been made to notify the approximately 3,000 lease holders that will be affected by this final rulemaking to make their remittances to the Minerals Management Service.

This change is being issued as a final rulemaking because it is an administrative change, one that imposes no new burdens on the public. Holders of mineral leases on the six categories of lands covered will continue to have to remit required payments, but with this amendment will make all payments after the initial payment to the Minerals Management Service, rather than the Bureau of Land Management.

The principal author of this final rulemaking is Robert C. Bruce, Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this final rulemaking will affect equally all entities, large or small. The impact will be insignificant since it only requires a change in the agency within the Department of the Interior to whom the required remittances payable after lease issuance are made in connection with mineral leases issued by the Bureau of Land Management on six identified categories of lands.

This final rulemaking contains no additional information collection requirements requiring approval by the

Office of Management and Budget under 44 U.S.C. 3501 et seq.

#### List of Subjects

##### 43 CFR Part 3100

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

##### 43 CFR Part 3200

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

##### 43 CFR Part 3470

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

##### 43 CFR Part 3500

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

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

Dated: September 28, 1984.

J. Steven Criles

Acting Assistant Secretary of the Interior.

#### PART 3100—[AMENDED]

##### § 3103.1-2 [Amended]

1. Section 3103.1-2(a) is amended by:  
A. Amending paragraph (1) by removing the last sentence thereof in its entirety; and

B. Amending paragraph (2) by removing the phrase "for nonproducing leases not covered by paragraph (a)(1) of this section".

#### PART 3200—[AMENDED]

##### § 3205.1-2 [Amended]

2. Section 3205.1-2(a) is amended by:  
A. Amending paragraph (1) by removing the last sentence thereof in its entirety; and

B. Amending paragraph (2) by removing the phrase "not covered by paragraph (a)(1) of this section".

#### PART 3470—[AMENDED]

##### § 3473.1-2 [Amended]

3. Section 3473.1-2(a) is amended by:  
A. Amending paragraph (1) by removing the last sentence thereof in its entirety; and

B. Amending paragraph (2) by removing the phrase "not covered by paragraph (a)(1) of this section".

#### PART 3500—[AMENDED]

##### § 3503.1-2 [Amended]

4. Section 3503.1-2 (a) is amended by:  
A. Amending paragraph (1) by removing the last sentence thereof in its entirety; and

B. Amending paragraph (2) by removing the phrase "not covered by paragraph (a)(1) of this section".

[FR Doc. 84-28442 Filed 10-4-84; 8:45 am]

BILLING CODE 4310-84-M

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Parts 2 and 87

[General Docket No. 84-186; RM-4077; FCC 84-446]

#### Aeronautical Flight Test Telemetry Operations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This document amends the Commission's rules that govern aeronautical flight test telemetry operations. This action is taken to conform our rules with the Final Acts of the 1979 World Administrative Radio Conference and to address a petition filed by the Aerospace & Flight Test Radio Coordinating Council. The amended rules would expand aeronautical flight test telemetry operations to the 2310-2390 MHz band and modify the technical criteria that govern such operations.

**EFFECTIVE DATE:** November 5, 1984.

**FOR FURTHER INFORMATION CONTACT:** William P. Berges, Private Radio Bureau, (202) 632-7175.

**SUPPLEMENTARY INFORMATION:**

#### List of Subjects

##### 47 CFR Part 2

Communications equipment.  
Aeronautical stations.

## Report and Order (Proceeding Terminated)

In the matter of amendment of Parts 2 and 87 of the Commission's rules regarding aeronautical flight test telemetry, Gen. Docket No. 84-186, RM-4077.

Adopted: September 26, 1984.

Released: September 28, 1984.

By the Commission.

1. This Report and Order amends Parts 2 and 87 of the Commission's rules to permit the operation of aeronautical flight test telemetering airborne stations (flight test telemetry stations) in the 2310-2390 MHz band.<sup>1</sup> It also clarifies the rules that govern such operations in the bands 1435-1535 MHz and 2310-2390 MHz.

### Background

2. On February 24, 1984, the Commission adopted a Notice of Proposed Rule Making (Notice) proposing to amend the Commission's flight test telemetry rules.<sup>2</sup> This action was taken to conform our rules with the Final Acts of the 1979 World Administrative Radio Conference (WARC-79) and to address a petition (RM-4077) filed by the Aerospace & Flight Test Radio Coordinating Council (AFTRCC).<sup>3</sup> In the Notice we stated that Government agencies and non-Government FCC licensees are currently authorized to use flight test telemetry frequencies in the 1435-1535 MHz band on a shared, coordinated basis. The frequencies between 1435-1485 MHz are assigned primarily for the flight testing of unmanned aircraft or their major components, and the frequencies between 1485-1535 MHz are assigned primarily for the flight testing of manned aircraft and missiles or their major components. Flight test telemetry licensees are normally authorized to operate on 1 MHz bandwidth channels but upon showing of need operations on wider bandwidths are permitted. In recent years the number and complexity of flight tests have increased substantially and have caused congestion in the 1435-1535 MHz band.

<sup>1</sup> Flight test telemetry stations are used to transmit diagnostic test data during the research and development phases of manned and unmanned aircraft, booster rockets and other expendable vehicles, or their major components. This includes operations associated with the launching and re-entry into the earth's atmosphere of manned or unmanned objects undergoing flight tests, as well as any incidental orbiting prior to re-entry.

<sup>2</sup> Gen. Docket No. 84-186, released March 2, 1984, FCC 84-57, 49 FR 8455.

<sup>3</sup> AFTRCC is a trade association of major entities engaged in the design and manufacture of Government and non-Government aircraft, space vehicles and their major components. AFTRCC is recognized by the Commission as the frequency advisory committee for non-Government flight test telemetry station assignments. See *Report and Order*, Docket No. 18234, adopted January 8, 1983, 15 FCC 2d 831.

As a result, in WARC-79 the United States supported the use of the 2310-2390 MHz band on a primary basis for flight test telemetry operations and the proposal was adopted. On November 8, 1983, the Commission amended § 2.106 of the rules (Table of Frequency Allocations) to allocate the 2310-2390 MHz band primarily to aeronautical flight test telemetering and associated telecommand operations.<sup>4</sup> The Table also affords primary status to the Government Radiolocation Service in this band.

3. In response to AFTRCC's petition the Commission proposed to make the following changes to the rules that govern the licensing and operation in the flight test telemetry frequencies:

(a) Make the 2310-2390 MHz band available for assignment to flight test telemetry stations.

(b) Eliminate restrictions in the flight test telemetry service specifying certain frequencies for manned and others for unmanned operations.

(c) Specify a maximum power limitation of 25 watts at the output terminals of flight test telemetry transmitters.

(d) Authorize the use of ground-to-air telecommand operations in the flight test telemetry bands.

(e) Authorize the use of 1, 3 and 5 MHz bandwidth channels on a routine basis in the flight test telemetry service, and conform with the international Radio Regulations by requiring flight test telemetry transmitters installed after January 1, 1985, and all such transmitters in operation after January 1, 1990, to have a frequency tolerance of 0.002%.

(f) Retain the current rules defining the bandwidth of flight test telemetry stations.

(g) Not require applicants to provide spectrum occupancy photographs of their stations to the frequency advisory committee.

(h) Add emission limitations for digitally modulated (F9Y) flight test telemetry stations identical to those currently applied to F9 stations.

(i) Require the frequency advisory committee to coordinate frequency assignment requests with the responsible Government Area Frequency Coordinator.

### Comments and Discussion

4. The following parties filed comments in this proceeding: (a) AFTRCC, (b) American Radio Relay League, Incorporated (ARRL), and (c)

<sup>4</sup> See *Second Report and Order*, General Docket No. 80-739, released December 8, 1983, FCC 83-511, 49 FR 2357, January 19, 1984.

Southern California Repeater and Remote Base Association (SCRRBA). Reply comments were filed by AFTRCC. The issues raised in this proceeding were also reviewed by an ad hoc committee (Ad Hoc 185) formed by the Interdepartment Radio Advisory Committee (IRAC).<sup>5</sup>

### Amateur Allocation

5. ARRL and SCRRBA had filed petitions for reconsideration in Gen. Docket No. 80-739 requesting that the secondary allocation of the 2310-2390 MHz band for the Amateur Radio Service be retained. In their comments in this proceeding, ARRL reiterated its request that the Amateur Radio Service retain its secondary allocation of the band. SCRRBA argued that it was premature to take final action in this proceeding until the petitions for reconsideration were resolved. AFTRCC opposed the use of the 2310-2390 MHz band by the Amateur Radio Service.

6. In a Memorandum Opinion and order in Gen. Docket No. 80-739, released July 2, 1984, FCC 84-306, the Commission denied the ARRL and SCRRBA petitions for reconsideration. Therefore, the issues raised by ARRL and SCRRBA regarding a secondary allocation of the 2310-2390 MHz band for the Amateur Radio Service are moot. Accordingly, we are amending the rules to implement the allocation of the 2310-2390 MHz band for flight test telemetry operations as proposed.

### Frequencies for Manned and Unmanned Operations

7. The Notice proposed to eliminate the division of frequencies between manned and unmanned vehicles. We felt this change would provide greater flexibility and permit more efficient use of the bands by frequency coordinators and flight test officers. There was no opposition to this proposal. Therefore, for the reasons stated in the Notice we are amending the rules as proposed.

### Power Limitation

8. The Commission's rules currently provide that the power of any station in the Aviation Services must not be greater than the minimum required for satisfactory operation.<sup>6</sup> In its petition AFTRCC recommended that the Commission's rules be amended to authorize a maximum power limitation of 25 watts at the antenna input of flight test telemetry stations. AFTRCC requested this power limitation to

<sup>5</sup> Ad Hoc 185 is a committee formed by IRAC to review the issues in this proceeding for Government users of the flight test telemetry bands.

<sup>6</sup> See § 87.63(a), 47 CFR 87.63(a).

prevent adjacent channel interference. In the Notice we pointed out it would be very difficult for the Commission to enforce a maximum power limitation at the antenna input. Consequently, we proposed rules specifying a maximum power limitation of 25 watts at the output terminals of flight test telemetry transmitters.<sup>7</sup>

9. In its comments AFTRCC argued that the Commission's proposed rules do not satisfy the 25 watt antenna input power limitation recommended in its petition. AFTRCC stated that the Commission's proposal would provide less than 25 watts at the antenna input because in many cases the transmitter power of flight test telemetry stations is fed to more than one antenna. Also, large flight vehicles may require long cables between the transmitter and antenna, which attenuate substantially the power available at the antenna input. Therefore, AFTRCC urged the Commission to adopt rules consistent with the petition's recommendation.

10. As indicated in the Notice, a maximum power limitation measured at the antenna input would be impractical to enforce. It would also be difficult to type accept transmitters with differing performance characteristics, depending upon their ultimate application.

After careful review of this issue, we conclude that there is no need to impose more restrictive power limitations on flight test stations. AFTRCC coordinates all non-Government flight test frequency assignments and as the frequency coordinator it has the discretion to recommend disapproval of flight test telemetry operations seeking to employ excessive power. Thus it is preferable to retain this flexible arrangement rather than impose an unsatisfactory standard. Therefore, we are not adopting the more restrictive power limitation proposed in the Notice.

#### Telecommand Operations

11. In response to AFTRCC's request the Notice proposed to amend the rules to authorize the use of the 1435-1535 MHz and the 2310-2390 MHz bands for ground-to-air telecommand communications. Telecommand communications were defined to include only ground-to-air transmissions directly associated with the support of telemetering functions authorized in these bands. The following examples of telecommand operations were noted: (a) In-flight, real-time reformatting of airborne data systems; (b) time code synchronization; (c) in-flight programming of peculiar flight test equipment, i.e., excitation of aircraft

control surfaces to determine flutter characteristics of aircraft; (d) merging of data from ground telemetry systems, such as event markings, with the airborne transmitted data; and (e) presentation to the test pilot of critical flight information that is obtained when the flight test telemetry data are processed on the ground. Additionally, the Notice questioned whether telecommand operations should be segregated on designated segments of the telemetry bands or assigned adjacent to the telemetry channels authorized for the particular flight test vehicle in order to prevent co-channel and adjacent channel interference.<sup>8</sup>

12. In its comments AFTRCC argued that the term "telecommand" is too broad and that the proposed rules do not adequately define the scope of the intended "uplink" telemetry operations. For example, AFTRCC feared the bands could be used to control unmanned remotely piloted vehicles (RPV's). AFTRCC recommends limiting the use of such "uplink" communications to transmit data or directions to onboard flight test systems under the control of the vehicle's crew.<sup>9</sup> Additionally, AFTRCC recommended that such "uplink" communications not be restricted to specific channels in the telemetry bands.

13. We believe that the proposed rules adequately limit and define the use of the bands for ground-to-air telecommand communications. In Gen. Docket No. 80-739, the Commission modified US276 in the Table of Frequency Allocations to read as follows: "Use of the band 2310-2390 MHz by the mobile service is limited to aeronautical telemetering and associated telecommand operations for flight testing of manned or unmanned aircraft, missiles \* \* \*." (emphasis added). It was also indicated that US78 which pertains to the use of the 1435-1535 MHz band would be modified in the instant proceeding.<sup>10</sup> Thus we used the term "telecommand" to be consistent with previous actions. Further, the proposed rule §§ 87.5, 87.331(e), and 87.338(a) limit telecommand transmissions in the 1435-1535 MHz and 2310-2390 MHz bands to those operations that are associated directly with the support of flight test telemetering authorized in these bands. In summary, the telecommand operations proposed in this proceeding must meet two criteria: (a) They must be

associated with the diagnostic information transmitted by flight test telemetry stations of manned or unmanned flight vehicles provided such information is for the test vehicle or its major components, and (b) the information transmitted by the telecommand stations must be in a format similar to the one used by flight test telemetry stations, i.e., of an analog or digital data type, uniquely distinguished from the types used for voice and video transmissions. Therefore, we do not believe the proposed rules expand the authorized use of the bands to include all forms of telecommand operations as feared by AFTRCC. However, we concur with AFTRCC's view that there is no need to restrict telecommand operations to specific channels. Accordingly, we are amending the rules relating to telecommand operations as proposed.

#### Bandwidth and Frequency Stability

14. The Notice proposed to authorize the use of 1, 3 and 5 MHz bandwidth channels on a routine basis in the flight test telemetry service to accommodate high speed data transmissions by flight test telemetry stations. There was no objection to this proposal. Therefore, we are amending the rules as proposed to provide greater flexibility for the subject licensees.

15. AFTRCC's petition recommended expanding the 0.003% frequency tolerance to transmitters operating in the 2310-2390 MHz band. Because the international Radio Regulations will require all transmitters operating in the telemetry bands to have a frequency tolerance of 0.002% after January 1, 1990, the Notice proposed the following implementation schedule: (a) Transmitters installed prior to January 2, 1985, must have a frequency tolerance of 0.003%; (b) transmitters installed after January 2, 1985, must have a frequency tolerance of 0.002%; and (c) all transmitters in operations after January 1, 1990, must have a frequency tolerance of 0.002%. In its comments AFTRCC pointed out that the inventory of 0.003% frequency tolerance transmitters maintained by aerospace manufacturers may not be depleted by January 1, 1985, when the proposed frequency tolerance of 0.002% would go into effect. Accordingly, we are adopting rules to require a frequency tolerance of 0.002% for all transmitters manufactured after January 1, 1985. After January 1, 1990, all transmitters operating in the telemetry bands must have a frequency tolerance of 0.002% regardless of their date of manufacture.

<sup>7</sup> See paras. 14. of the Notice and B.1. and B.8. in the Appendix of the Notice.

<sup>8</sup> See AFTRCC comments pages 6, 7 and 8.

<sup>10</sup> See, *Second Report and Order*, Docket No 80-739, *supra* at paras 49 and 54.

<sup>9</sup> See paragraph 11 in the Notice.

*Definition of Bandwidth*

16. In its petition AFTRCC argued that the various definitions and standards which specify the channel bandwidth of flight test telemetry stations in the Commission's rules and National Telecommunications and Information Administration (NTIA) manuals are confusing. AFTRCC sought a single definition for bandwidth and revision of the factors in § 2.202(g) of the Commission's rules that are used to compute the bandwidth of flight test telemetry stations.<sup>11</sup> In the Notice we noted that the terms of these definitions are interrelated but have different meanings. We tentatively concluded not to adopt the changes recommended by AFTRCC but we requested comments on this issue.

17. AFTRCC commented that the changes recommended in its petition would present realistically the bandwidth that is actually used and state more accurately the amount of spectrum actually occupied by each telemetry system with no change to the spectrum congestion. As a result, the recommended changes would facilitate assignment or scheduling of adjacent channels during the same operating period.

18. The gist of this problem is that flight test telemetry stations assigned adjacent frequency channels experience interference when they are operating in geographic proximity. This is a natural phenomenon which is neither unique to nor properly solved by redefining the bandwidth of flight test telemetry stations. In radio services where the Commission or other industry organizations coordinate frequency assignments, this type of interference is prevented by specifying separation distances for stations operating on adjacent frequency channels.<sup>12</sup> AFTRCC and flight test schedulers can develop similar standards and procedures to prevent this problem. We continue to believe that although the subject terms are interrelated the different meanings are necessary. For example: necessary bandwidth is defined as the width of the frequency band which is sufficient to ensure the transmission of information at the required rate and quality under specified conditions. Necessary bandwidth has an absolute constant value which is used to determine the channel bandwidth that a station is authorized for its operation. Occupied

bandwidth is the width of a frequency band in which above and below its center the emissions are attenuated at a prescribed rate. Utilizing a single definition of "bandwidth" for all these terms would do little to alleviate adjacent channel interference. Accordingly, we will retain the bandwidth definitions and factors currently specified in the rules.

*Spectrum Occupancy Photographs*

19. AFTRCC also requested the Commission to require applicants for flight test telemetry frequencies to provide spectrum occupancy photographs of their stations. These photographs could be used by the frequency coordinators to assist in selecting the optimum frequencies for the applicants, verify at the test range that each telemetry station is operating within its authorized emission limits, and supply channel schedulers with an accurate measurement of the actual spectrum used by any station. In the Notice we stated that the standards for computing the occupied bandwidth and emission limitations of flight test telemetry transmitters can be determined using §§ 87.67 and 2.202(g) of the rules. Spectrum occupancy photographs submitted during the licensing application process would not necessarily verify whether a station is operating within its authorized emission limits. Such verification can only be accomplished at the test range during pre-flight tests. Furthermore, we believed that the majority of prospective flight test telemetry licensees submit their applications for approval before they procure their transmitters. We concluded that rules requiring submission of spectrum occupancy photographs with the license application would impose an unnecessary burden on the users. Although we did not propose to implement AFTRCC's recommendation we invited comments on this issue.

20. AFTRCC conceded that spectrum occupancy photographs would not necessarily verify whether a station is operating within its authorized emission limits. However it argued that spectrum photographs would be used as a record showing the legally authorized bandwidth. AFTRCC also claimed that applicants purchase or select their transmitters before making application since the manufacturer and model of their equipment is required by the frequency coordinators to act on frequency requests. Therefore, tests to obtain the spectrum photographs can be performed either by the user or the transmitter manufacturer. AFTRCC requested the rules include at least a

recommendation that spectrum photographs be submitted to assist in field selection and scheduling.

21. We consider that adoption of rules to satisfy this recommendation would impose a unique and unduly burdensome requirement on the flight test telemetry radio users. The Commission's rules (§ 87.71 (e) and (f)) adopted at request of a previous AFTRCC petition (RM-2075) sufficiently defined the emission limitation standards and can be used to determine the authorized bandwidth of flight test telemetry stations.<sup>13</sup> The rules permit licensees in every radio service to alter the emission profiles of their stations provided they do not exceed the limitation standards of their assigned channels. Considering that compliance with these standards can be verified using conventional techniques we have concluded that submission of spectrum occupancy photographs by applicants is not necessary. Congestion can be prevented by proper assignment of frequencies during the frequency coordination process and appropriate scheduling of flight tests. Frequency coordinators and flight test range schedulers, however, may request at their discretion that flight test telemetry licensees provide spectrum occupancy photographs of their stations prior to flight tests.

*Emission Limitations*

22. The Notice proposed to correct the omission of the emission limitations for digitally modulated (F9Y) stations in § 87.67 of the rules. No opposition was made to this proposal. Therefore, we are correcting the rules to add the F9Y emission limitations as proposed.

*Coordination with the Government*

23. Currently AFTRCC coordinates frequency assignment requests with the responsible Government Area Frequency Coordinator on an informal basis. The Notice proposed to require such coordination to minimize the potential for interference in the shared Government and non-Government bands. There was no opposition to the proposal. For the reasons stated in the Notice, we are amending the rules as proposed.

*Conclusion*

24. There rule amendments implement a new allocation for flight test telemetry operations adopted at the 1979 World Administrative Radio Conference, and revise certain operating and licensing

<sup>11</sup> See AFTRCC petition RM-4077, filed March 17, 1982 at page 18 and Appendix C.

<sup>12</sup> For example for adjacent frequency channel separation of FM broadcast and TV stations see § 73.207, 73.213 and 73.610, 47 CFR 73.207, 73.213, and 73.610.

<sup>13</sup> See *Report and Order*, Docket No. 20802, 63 FCC 2d 526, adopted January 4, 1977.

procedures as requested by the frequency advisory committee for the aerospace industry. These frequency bands are primarily utilized by very large organizations which manufacture aircraft or major aircraft components. No economic impact on small entities is expected. Consequently, in accordance with section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) the Commission hereby certifies that these rules as promulgated will not have a significant impact on a substantial number of small entities.

25. For the reasons stated above, it is ordered, That under the authority contained in sections 4(i) and 303 (c), and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303 (c), and (r), the Commission's rules are amended as set forth in the attached Appendix A, effective November 5, 1984.

26. It is further ordered, That a copy of this Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

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

28. Regarding questions on matters covered in this document contact William P. Berges, (202) 632-7175.

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

Federal Communications Commission.

William J. Tricarico,  
Secretary.

## Appendix

Parts 2 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

Part 2—Frequency Allocation and Radio Treaty Matters; General Rules and Regulations.

In § 2.106 Footnote US78 is revised to read as follows:

### § 2.106 Table of frequency allocations.

US78. The frequencies between 1435 and 1535 MHz will be assigned for aeronautical telemetry and associated telecommand operations for flight testing of manned or unmanned aircraft and missiles, or their major components. Permissible usage includes telemetry associated with launching and reentry into the earth's atmosphere as well as any incidental orbiting prior to reentry of manned objects undergoing flight tests. The following frequencies are shared with flight telemetering mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5 and 1525.5 MHz. In the band 1530-1535 MHz, the Maritime Mobile-Satellite Service will be the only primary service after January 1, 1990.

## PART 87—AVIATION SERVICES

1. Section 87.5 is amended by revising "Aeronautical telemetering mobile station", by adding after "Aeronautical telemetering mobile station" a new definition for "Aeronautical telemetering telecommand station", by adding after "Fixed station" two new definitions for "Flight telemetering mobile station" and "Flight telemetering telecommand station", and by adding after "Survival craft station" a new definition for "Telecommand" to read as follows:

### § 87.5 Definition of terms.

*Aeronautical telemetering mobile station.* A telemetering mobile station used for transmitting data directly related to the airborne testing of the vehicle (or major components), on which the station is installed.

*Aeronautical telemetering telecommand station.* A station used for the telecommand of aeronautical telemetering mobile stations.

*Flight telemetering mobile station.* A telemetering mobile station used for transmitting data from an airborne vehicle, excluding data related to airborne testing of the vehicle itself (or major components thereof).

*Flight telemetering telecommand station.* A station used for the telecommand of flight telemetering mobile stations.

*Telecommand.* The use of telecommunication for the transmission of signals to initiate, modify or terminate functions of equipment at a distance.

2. In § 87.65 paragraph (f) is revised to read as follows:

### § 87.65 Frequency stability.

(f) The carrier frequency of transmitters operating in the 1435-1535 MHz and 2310-2390 MHz bands manufactured before January 2, 1985, must remain within 0.003 percent of the assigned frequency. The carrier frequency of transmitters operating in the 1435-1535 MHz and 2310-2390 MHz bands manufactured after January 1, 1985, must remain within 0.002 percent of the assigned frequency. After January 1, 1990, the carrier frequency of transmitters operating in the 1435-1535 MHz and 2310-2390 MHz bands must remain within 0.002 percent of the assigned frequency regardless of the date of their manufacture.

3. In § 87.67 footnote 8 in paragraph (b) is revised and a new paragraph (f) is added to read as follows:

### § 87.67 Types of emission.

(b) \* \* \*

\*The authorized bandwidth is equal to the necessary bandwidth for frequency or digitally modulated transmitters used in aeronautical telemetering and associated aeronautical telemetering telecommand stations operating in the 1435-1535 MHz and 2310-2390 MHz bands. The necessary bandwidth must be computed in accordance with Part 2 of this chapter.

(f) Emissions for assignments in the 1435-1535 MHz and 2310-2390 MHz bands will be designated according to their class and necessary bandwidth.

4. In § 87.71 the introductory text of paragraphs (a), (e) and (f) are revised to read as follows:

### § 87.71 Emission limitations.

(a) When using transmissions other than single sideband (A3A, A3H, or 3A3J), or frequency modulation (F9) or digital modulation (F9Y) by telemetry and telecommand stations in the frequency bands 1435-1535 MHz and 2310-2390 MHz, the mean power of the emission must be attenuated below the mean output power of the transmitter as follows:

(e)<sup>1</sup> When using frequency modulated transmissions (F9) or digitally modulated transmissions (F9Y) for telemetry or telecommand in the 1435-1535 MHz and 2310-2390 MHz frequency bands with an authorized bandwidth equal to or less than 1 MHz:

(f)<sup>1</sup> When using frequency modulated transmissions (F9) or digitally modulated transmissions (F9Y) for telemetry or telecommand in the 1435-1535 MHz and 2310-2390 MHz frequency bands with an authorized bandwidth greater than 1 MHz:

5. In § 87.331 paragraphs (e) and (g) are revised to read as follows:

### § 87.331 Frequencies available.

(e) Frequencies in the bands 1435-1535 MHz and 2310-2390 MHz will be assigned primarily for telemetry and telecommand operations associated with the flight test of manned or unmanned aircraft and missiles or their major components. Permissible uses include telemetry and telecommand associated with the launching and reentry into the earth's atmosphere as

well as any incidental orbiting prior to reentry of manned or unmanned objects undergoing flight tests. In the 1435-1535 MHz band the following frequencies are shared with flight telemetering mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5 and 1525.5 MHz. In the 2310-2390 MHz band all other mobile telemetering and telecommand uses shall be secondary. The Maritime Mobile-Satellite Service will be the only primary service in the 1530-1535 MHz band after January 1, 1990.

(g) Aeronautical telemetering mobile stations operating in the bands 1435-1535 MHz and 2310-2390 MHz will normally be authorized channel bandwidths of 1, 3 or 5 MHz. Applications for channels with greater bandwidths will be considered. Each channel assignment will be centered on frequencies at standard intervals of 1 MHz, beginning at 1435.5 MHz in the 1435-1535 MHz band and 2310.5 MHz in the 2310-2390 MHz band.

6. In § 87.334 paragraphs (a)(1), (a)(2) and (c)(1) are revised to read as follows:

**§ 87.334 Frequency coordination.**

(a) \* \* \*

(1) A report based on a field study, indicating the degree of probable interference to existing stations operating in the same area. The applicant must consider all prior coordinations and assignments on the requested frequency or frequencies within 200 miles of the proposed area of operation.

(2) A written statement must be included with the report saying that a notice of intention to file such application has been provided to all existing licensees within the frequency and mileage limits contained in paragraph (a)(1) of this section. The notice of intention to file must contain the following information: the frequency and emission description, power and area of operation of transmitter, gain and description of antenna system, and altitude of proposed operation. Copies of the written statement and notice of intention to file must also be provided to

the frequency advisory committee defined in paragraph (c)(2) of this section.

(c)(1) In lieu of the report and written statement required by paragraphs (a) (1) and (2) of this section, a statement from the frequency advisory committee may be submitted. Taking into account the frequency or frequencies requested or the proposed changes in the authorized station the committee shall forecast the probable interference of the proposal to existing stations. The committee shall consider all prior coordinations and assignments on the requested frequency or frequencies within 200 miles of the proposed area of operation. The committee must coordinate in writing all requests for frequencies or proposed operating changes in the 1435-1535 MHz and 2310-2390 MHz bands with the responsible Government Area Frequency Coordinators listed in the NTIA "Manual of Regulations & Procedures for Radio Frequency Management". The committee must recommend frequencies which will result in the least amount of interference to proposed and existing stations. The committee may comment on the technical factors and recommend conditions or restrictions to prevent interference.

7. New § 87.338 is added to read as follows:

**§ 87.338 Telecommand operations.**

(a) Aeronautical telemetering telecommand stations will be authorized in the 1435-1535 MHz and 2310-2390 MHz bands only for transmissions directly supporting the telemetering functions authorized in these bands.

(b) Aeronautical telemetering telecommand stations are limited to an authorized bandwidth of 1 MHz and must use antennas having a half power beamwidth of no more than 8° and a front-to-back ratio of at least 20 dB.

[FR Doc. 84-26447 Filed 10-4-84; 8:45 am]

BILLING CODE 6712-01-M

**GENERAL SERVICES ADMINISTRATION**

**48 CFR Ch. 5**

**Disputes and Appeals; Rules of the GSA Board of Contract Appeals**

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Final rule; correction.

**SUMMARY:** The incorrect change number was published in FR Doc. 84-24155, September 13, 1984, page 35938, [49 FR 35938]. The correct change number should read "[APD 2800.12 CHGE 3]".

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

**FOR FURTHER INFORMATION CONTACT:** Carol A. Farrell, Office of GSA Acquisition Policy and Regulations, (202) 523-3822.

**Authority:** 40 U.S.C. 486(c).

Dated: September 27, 1984.

**William B. Ferguson,**  
*Acting Assistant Administrator for Acquisition Policy.*

[FR Doc. 84-26463 Filed 10-4-84; 8:45 am]

BILLING CODE 6820-61-M

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Parts 571, 574, and 575**

[Docket No. 84-11; Notice 1]

**Corrections of Errors in Code of Federal Regulations**

*Correction*

In FR Doc. 84-26001, beginning on page 38610 in the issue of Monday, October 1, 1984, make the following correction: On page 38613, in the first column, the graph coordinates described in the third line of text below Figure 1 should have read " $x_j, y_j$  ( $j=0, 1, \dots, 8$ )".

BILLING CODE 1505-01-M

# Proposed Rules

Federal Register

Vol. 49, No. 195

Friday, October 5, 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.

Headquarters Building (FOB-10A),  
Federal Aviation Administration, 800  
Independence Avenue, SW.,  
Washington, D.C. 20591; telephone (202)  
426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part

11 of the Federal Aviation Regulations  
(14 CFR Part 11).

Issued in Washington, D.C. on October 1,  
1984.

John Cassady,

Assistant Chief Counsel, Regulations and  
Enforcement Division.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Ch. I

[Summary Notice No. Pr-84-10]

#### Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

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

**ACTION:** Notice of petitions for  
rulemaking and of dispositions of  
petitions denied or withdrawn.

**SUMMARY:** Pursuant to FAA's  
rulemaking provisions governing the  
application, processing and disposition  
of petitions for rulemaking (14 CFR Part  
11), this notice contains a summary of  
certain petitions requesting the initiation  
of rulemaking procedures for the  
amendment of specified provisions of  
the Federal Aviation Regulations and of  
denials or withdrawals of certain  
petitions previously received. The  
purpose of this notice is to improve the  
public's awareness of this aspect of  
FAA's regulatory activities. Neither  
publication of this notice nor the  
inclusion or omission of information in  
the summary is intended to affect the  
legal status of any petition or its final  
disposition.

**DATE:** Comments on petitions received  
must identify the petition docket number  
involved and be received on or before,  
January 3, 1985.

**ADDRESS:** Send comments on the  
petition in triplicate to: Federal Aviation  
Administration, Office of the Chief  
Counsel, Attn: Rules Docket (AGC-204),  
Petition Docket No. —, 800  
Independence Avenue, SW.,  
Washington, D.C. 20591.

**FOR FURTHER INFORMATION CONTACT:**  
The petition, any comments received,  
and a copy of any final disposition are  
filed in the assigned regulatory docket  
and are available for examination in the  
Rules Docket (AGC-204), Room 916 FAA

#### PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of petition
23345	AOPA/EEA	Description of Petition: To revise the regulations to permit the certification, operation and maintenance of a new category of aircraft within the standard airworthiness classification, termed "primary aircraft," and to provide for the issuance of a new experimental certificate known as "personal use." Regulations affected: 14 CFR Parts 1.1, 21.22 [new], 21.33, 21.35, 21.175, 21.181, 21.191, 43.3, 43.7(g) [new], Appendix A to Part 43, 91.43, and 91.169. Petitioner's Reason for Rule: Adoption of this petition should lower the cost of certain small aircraft not used to carry passengers or cargo for hire. Part 23 applies to certification of all small aircraft, regardless of simplicity or intended use. Adoption of this petition would be consonant with the Congressional intent to establish standards, rules, regulations, and certificates appropriate to the differences between air transportation and other air commerce. The proposal would extend the scope of permissible special maintenance for owners of primary aircraft who can demonstrate competency to perform specific tasks in connection with the inspection and maintenance of their aircraft.

[FR Doc. 84-26425 Filed 10-4-84; 8:45 am]

**BILLING CODE 4910-13-M**

#### 14 CFR Part 39

[Docket No. 84-CE-31-AD]

**Airworthiness Directives; Beech  
Models A23-19, 19A, M19A, B19, 23,  
A23, A23A, B23, C23, A23-24, A24,  
A24R, B24R, and C24R Airplanes**

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

**ACTION:** Notice of proposed rulemaking  
(NPRM).

**SUMMARY:** This Notice proposes to  
adopt a new Airworthiness Directive  
(AD), applicable to Beech Models A23-  
19, 19A, M19A, B19, 23, A23, A23A, B23,  
C23, A23-24, A24, A24R, B24R, and C24R  
airplanes. This AD would require  
installation of a decal and a fuel selector  
valve handle stop per Beechcraft Service  
Instructions No. 1095, Revision 1.

The fuel selector valve handle has  
been found out of a tank position detent  
during investigations of accidents which  
occurred after loss of engine power on  
one or more of the applicable model  
airplanes. The installation of the fuel  
selector valve stop and instructional  
placard will prevent or reduce the  
possibility of the inadvertent selection  
of the "off" position detent.

**DATE:** Comments must be received on or  
before November 27, 1984.

**ADDRESSES:** Beechcraft Service  
Instructions No. 1095, Revision 1,  
applicable to this AD may be obtained  
from Beech Aircraft Corporation, Post  
Office Box 85, Wichita, Kansas 67201 or  
the Rules Docket at the addresses  
below. Send comments on the proposal  
in duplicate to Federal Aviation  
Administration, Central Region, Office  
of the Regional Counsel, Attention:  
Rules Docket No. 84-CE-31-AD, Room  
1558, 601 East 12th Street, Kansas City,  
Missouri 64106. Comments may be  
inspected at this location between 8 a.m.  
and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**  
Jack Pearson, Aerospace Engineer,  
Wichita Aircraft Certification Office,  
ACE-140W, 1801 Airport Road, Room  
100, Mid-Continent Airport, Wichita,  
Kansas 67209; Telephone (316) 946-4427.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to  
participate in the making of the  
proposed rule by submitting such  
written data, views or arguments as  
they may desire. Communications  
should identify the regulatory docket or  
notice number and be submitted in  
duplicate to the address specified  
above. All communications received on

or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

#### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-CE-31-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

#### Discussion

Investigations of accidents involving Model B19, C-23 and C-24 airplanes following loss of engine power indicated that fuel starvation occurred as a result of the pilot's mispositioning the fuel selector. The fuel selector valve has four detent positions. These are located at 90° angles from each other and are "L Tank, R Tank, Off, Off" in this sequence. The fuel selector valve handle is larger in size than the pointer indicator located 180° opposite the handle. A pilot unfamiliar with or inadequately checked out in the airplane may inadvertently select an "off" position by mistaking the handles as the pointer indicator while attempting to switch tanks. To minimize the possibility of the pilot inadvertently turning the fuel selector valve to an "off" detent position, Beech Aircraft Corporation incorporated a fuel handle stop and instructional placard in airplanes now being produced. It has also made available in Beechcraft Service Instructions No. 1095, Revision 1, parts and instructions for modifying inservice airplanes to this configuration.

Since the condition described is likely to exist or develop in other Beech Models A23-19, 19A, M19A, B19, 23, A23, A23A, B23, C23, A23-24, A24, A24R, B24R, and C24R airplanes of the same design, the AD would require installation of a fuel selector valve stop and decal per Beechcraft Service Instructions No. 1095, Revision 1. The FAA has determined there are approximately 4,192 airplanes affected by the proposed AD. The cost of

modifying these airplanes in accordance with the proposed AD is estimated to be \$108.30 per airplane. The total cost is estimated to be \$454,000 to the private sector. The cost of compliance with this proposal is so small and those small entities owning the affected airplane own so few that the cost of compliance will not constitute a significant financial burden on any small entity.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

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

Air transportation, Aviation safety, Aircraft, Safety.

#### The Proposed Amendment

#### PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

**Beech:** Applies to Models 23 (S/N M-2, M-4 thru M-554); A23 (S/N M-3, M-555 thru M-900); A23A (S/N M-901 thru M-1094); A23-19 (S/N MB-1 thru MB-288); A23-24 (S/N MA-1 thru MA-363); A24 (S/N MA-364 thru MA-368); 19A (S/M MB-289 thru MB-460); M19A (S/N MB-461 thru MB-480); B19 (S/N MB-481 thru MB-905); B23 (S/N M-1095 thru M-1284); C23 (S/N M-1285 thru M-2223); A24R (S/N MC-2 thru MC-150); B24R (S/N MC-152 thru MC-448, MC-450, MC-451); C24R (S/N MC-449, MC-452 thru 701) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the inadvertent selection of a fuel selector "off" position, accomplish the following:

(a) Modify the fuel selector guard by incorporating the Selector Stop, Part Number 169-920041-9 and appropriate decal as identified by criteria in Beechcraft Service Instructions No. 1095, Revision 1.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(c) An equivalent means of compliance with the AD may be used, if approved, by the Manager, Wichita Aircraft Certification

Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and § 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Issued in Kansas City, Missouri, on September 28, 1984.

Murray E. Smith,  
Director Central Region.

[FR Doc. 84-26431 Filed 10-4-84; 8:45 am]

BILLING CODE 4910-13-M

#### CIVIL AERONAUTICS BOARD

#### 14 CFR Parts 302, 389, and 399

[PDR-88, ODR-27, PSDR-83; Procedural Regs., Organization Regs., Policy Statements; Docket 42497]

#### Rules of Practice in Board Proceedings; Fees and Charges for Special Services; and Statements of General Policy

Dated: September 18, 1984.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The CAB proposes to revise its requirements and procedures for applying for exemptions under section 416(b) of the Federal Aviation Act. The revisions simplify the application procedures and provide for service of a notice of application instead of the application itself. Service requirements would also be reduced or, in some cases, eliminated. The length of time for answers to exemption applications would be increased to 15 days. A policy statement concerning duration of exemption authority would be eliminated as inconsistent with current Board practice.

**DATES:** Comments by: November 19, 1984. Reply comments by: December 4, 1984.

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

Requests to be put on the Service List by: October 22, 1984.

The Docket Section prepares the Service List and sends it to each person listed. These persons then serve comments on all others on the list.

**ADDRESSES:** Twenty copies of comments should be sent to Docket 42497, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple

copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

**FOR FURTHER INFORMATION CONTACT:** Nancy Pitzer Trowbridge, Regulatory Affairs Division, Bureau of International Aviation, 202-673-5134, or John Craig Weller, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673-5442.

**SUPPLEMENTARY INFORMATION:** Section 416(b) of the Federal Aviation Act gives the Board the authority to exempt persons, or certain classes of persons, from provisions of the Act or Board regulations. Subpart D of Part 302 of the Board's Procedural Regulations contains the procedures to be followed in filing requests for such exemptions and specifies the evidence to be submitted in support of such requests.

Section 389.25 of the Board's Organization Regulations contains a list of processing fees for various Board actions, including the filing of exemption requests. Part 399 contains statements of general Board policy.

The Board is not proposing to change its rules regarding the filing of exemption requests. The Board is proposing these changes because the present rules are out of date and inconsistent with the changes made by the Airline Deregulation Act and the International Air Transportation Competition Act of 1979.

Under the proposal, Subpart D would include a new CAB form which would be used instead of the formal application procedures for authority involving ten or fewer flights. The Board has found that such limited requests by carriers that have already been found fit are usually noncontroversial and uncontested. When the Board believes closer scrutiny is required, it may docket the application and subject it to further procedures. Therefore, simplified procedures that will reduce burdens on applicants and shorten processing time for the Board's staff are appropriate. The use of these simplified procedures is subject to restrictions to prevent their abuse.

The service requirements for exemption applications would also be reduced under this proposal. The present service requirements in Subpart D are quite lengthy and burdensome to applicants. The Board has tentatively concluded that these existing service requirements are overly detailed. Almost identical changes to the service requirements for U.S. air carrier certificates and foreign air carrier permit applications were proposed in EDR-467/

PDR-85, 48 FR 41430, September 13, 1983. Comments received were generally favorable, and the Board adopted those changes on August 2, 1984. PR-264, 49 FR 33441, August 23, 1984.

Applicants for scheduled interstate or overseas authority will be required to serve all U.S. air carriers (including commuters) that publish schedules in the Official Airline Guide (OAG) for the city-pair market(s) covered by the application, as well as local airport authorities. Applicants for scheduled foreign air transportation authority would be required to serve those U.S. carriers (including commuters) that publish schedules in the OAG for the country-pair market(s) involved. Those applicants seeking charter-only authority would usually have no service requirement, provided the application was timely filed. Those applicants for charter-only authority filing on short notice (less than 16 days) would be subject to more substantial service requirements as the normal period for answers would not be available.

In all cases, the proposed rules would require an applicant to serve only a notice of the application instead of the entire application itself. This procedure is now used for foreign air carrier permit applications and the Board has adopted it for certificate applications as well. PR-264, 49 FR 33441, August 23, 1984.

These reduced service requirements will ease the burden on applicants and, at the same time, the Board believes they will still provide adequate notice to carriers that might be affected by an application. The Board will publish weekly a list of applications filed. The proposal also extends the time allowed for an answer to an application from 10 to 15 days. This should allow affected carriers ample time to consult the Board's weekly list and prepare a response if needed.

The Board is also proposing a number of other changes in Subpart D at this time. An applicant would only be required to show that the exemption requested is consistent with the public interest. This standard is contained in the Airline Deregulation Act and would replace the "undue burden" standard of the present rule.

Applications for exemption concerning section 403 of the Act, tariffs, or Board regulations concerning tariffs (other than waivers filed under Subpart Q of Part 221) could be filed by letter or, upon good cause, by cablegram, telegram or telephone. Such applications would not be docketed in most cases, although they would be included in the Board's weekly list of applications.

Finally, the applicability of Subpart D would be broadened to include

exemptions to foreign air carriers and requests for exemptions to permit cabotage under certain specific emergency conditions. These changes would conform the Board's exemption rules with provisions of the Airline Deregulation Act.

In addition to the changes in Subpart D of Part 302, the Board is also proposing related changes in two other parts of the Board's rules. Part 389 lists the fees charged by the Board for various filings or services. In particular, § 389.25 sets out a schedule of processing fees for certain documents that may be filed with the Board. The Board proposes to change three of the codes contained in this schedule.

The first change relates to Code 23 which specifies the fee for filing applications for exemption from section 403 of the Act. The amount charged for such applications is based upon the fact that now all section 403 exemption applications are docketed. Docketed applications require more staff hours to process than undocketed applications. Because the Board now proposes that most section 403 exemption applications would be undocketed, a corresponding change to the filing fee schedule is appropriate. Section 389.25 (Code 23) would be amended to provide for different fees for docketed and undocketed section 403 exemption applications. The fee for docketed applications would remain unchanged at \$53. A new fee of \$16 would be added for undocketed applications. This figure is based on the assumption that the number of staff hours required to process an undocketed section 403 exemption request would generally be the same as is required for processing applications for free and reduced-rate air transportation. See, § 389.25 (Code 50).

The second change concerns applications for exemption from sections 401 and 402 of the Act. Codes 24 and 25 list the fees for filing exemption requests for 10 or fewer flights, or more than 10 flights, respectively. Code 26 provides for an additional fee if the exemption request is filed less than 10 days before the requested effective date. This 10-day time period corresponds to the normal time for answers to an exemption application, which is specified in § 302.406. Because the Board is now proposing to lengthen the time for answers to exemption applications to 15 days, a corresponding change in § 389.25 (Code 26) is also required. The additional charge specified in § 389.25 (Code 26) would apply to applications

filed less than 15 days prior to the effective date requested.

The last proposed change to the filing fee schedule is a housekeeping matter. Code 10 sets forth the fee for filing section 403 exemption applications relating to interstate and overseas air transportation. As of January 1, 1983, tariffs are no longer required for interstate and overseas air transportation; therefore, such exemptions are not required. Consequently, the Board proposes to remove and reserve Code 10.

Part 399 of the Board's rules contains statements of general policy that the Board has adopted. Section 399.18 states what was formerly the Board's policy concerning the duration of fixed-term route authority granted by exemption, and the renewal of such authority. Section 302.909 of the Board's Procedural Rules specifies the procedures for renewal of such fixed-term exemption authority. The Board now proposes to remove and reserve both these sections.

This proposal will conform the rules and policy statements to the procedures and policies the Board has been following since adoption of the Airline Deregulation Act. It is consistent with the other changes being proposed in Part 302.

#### Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Board certifies that none of these proposed changes will, if adopted, have a significant impact on a substantial number of small entities. Most small U.S. carriers are already exempted by Part 298 of the Board's rules from the certificate requirements of section 401 of the Act. Most small foreign air carriers are Canadian charter air taxi operators, which follow a simplified registration procedure specified in Part 294 of the rules. The procedures the Board is proposing here will not have a significant impact on the remaining small U.S. or foreign carriers because the proposals considerably reduce both filing and service requirements.

#### Paperwork Reduction Act

The collection-of-information requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. These requirements have been submitted to the Office of Management and Budget for review and comment. Persons may submit comments on the collection-of-information requirements to OMB and to the Board. Comments sent to OMB should be addressed to: Office of Information and Regulatory Affairs, ATTN: Desk Office of Civil Aeronautics

Board, Office of Management and Budget, Washington, D.C. 20503.

#### List of Subjects in Parts 302, 389, and 399

Administrative practice and procedure, Advertising, Air carriers, Air rates and fares, Antitrust, Archives and records, Authority Delegations, Consumer protection, Freight forwarders, Grant program-transportation, Hawaii, Motor carriers, Puerto Rico, Railroads, Reporting requirements, Travel agents, Virgin Islands.

#### Proposed Rule

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Part 302, *Rules of Practice in Board Proceedings*, Part 389, *Fees and Charges for Special Services*, and Part 399, *Statements of General Policy*, as follows:

#### PART 302—[AMENDED]

1. 14 CFR Part 302, Subpart D, would be revised to read:

##### Subpart D—Rules Applicable to Exemption Proceedings

Sec.	
302.400	Applicability.
302.401	Filing of application.
302.402	Contents of application.
302.403	Service of application.
302.404	Posting of application.
302.405	Dismissal or rejection of incomplete application.
302.406	Answers to applications for exemption.
302.407	Replies to answers.
302.408	Request for hearing.
302.409	Exemptions on the Board's initiative.
302.410	Emergency exemptions.

##### Subpart D—Rules Applicable to Exemption Proceedings

###### § 302.400 Applicability.

This subpart sets forth the rules applicable to proceedings for exemptions under sections 101(3), 416(b)(1), 416(b)(3), and 416(b)(7) of the Federal Aviation Act. It also provides for the granting of emergency exemptions. The provisions of Subpart A of this part also apply to such proceedings where not inconsistent with this subpart. Proceedings for the issuance of exemptions by regulation are subject to the provisions governing rulemaking.

###### § 302.401 Filing of application.

(a) Except as provided in paragraphs (b) and (c) of this section, applications for exemption shall conform to the requirements of §§ 302.3 and 302.4.

(b) Applications for exemption from section 401 or 402 of the Act (and

section 403 of the Act if accompanying the former) which involve 10 or fewer flights may be submitted to the Regulatory Affairs Division, Bureau of International Aviation on CAB Form 302. However, CAB Form 302 may not be used for:

(1) Applications filed under section 416(b)(7) of the Act;

(2) Applications by persons who do not have either:

(i) An effective air carrier certificate or foreign air carrier permit from the Board, or

(ii) A properly completed application for such a certificate or permit, and an effective exemption from the Board for operations similar to those proposed;

(3) Successive applications for the same or similar authority that would total more than 10 flights; or

(4) Any other application for which the Board decides the requirements of §§ 302.3 and 302.4 are more appropriate. Upon a showing of good cause, an application may be filed by cablegram, telegram, or telephone. All telephone requests must be confirmed by written application within three business days of the original request.

(c) Applications for exemption from section 403 of the Act, tariffs (except for waivers filed under Subpart Q of Part 221 of this Chapter), or Board regulations concerning tariffs may be submitted by letter. Three copies of such applications shall be sent to the International Rates and Fares Division, Bureau of International Aviation. Upon a showing of good cause, the application may also be filed by cablegram, telegram, or telephone. All telephone requests must be confirmed by written application within three business days of the original request.

(d) Applications filed under paragraph (a) of this section shall be docketed and any additional documents filed shall be identified by the assigned docket number.

(e) Applications filed under paragraph (b) or (c) of this section will normally not be docketed. The Board may require such applications to be docketed if appropriate. The Board will list the names and addresses of all persons filing such applications, and will briefly describe the authority sought, in its weekly list of applications filed.

###### § 302.402 Contents of application.

(a) *Title.* An application filed under § 302.401(a) shall be entitled "Application for Exemption," and shall state if the application involves renewal and/or amendment of existing exemption authority.

(b) *Factual statement.* Each application shall state:

(1) The section(s) of the Act or the rule, regulation, term, condition, or limitation from which exemption is requested;

(2) The proposed effective date and duration of the exemption;

(3) A description of how the applicant proposes to exercise the authority (for example, applications for exemption from section 401 or 402 of the Act should include at least: Places to be served; equipment types, capacity and source; type and frequency of service; and other operations which the proposed service will connect with or support); and

(4) Any other facts the applicant relies upon to establish that the proposed service will be consistent with the public interest.

(c) *Supporting evidence.* (1) Each application shall be accompanied by:

(i) A statement of economic data, or other matters or information that the applicant desires the Board to officially notice;

(ii) Affidavits, or statements under penalty of perjury, establishing any other facts the applicant wants the Board to rely upon; and

(iii) Information showing the applicant is qualified to perform the proposed services.

(2) In addition to the information required by paragraph (c)(1) of this section, an application for exemption from section 401 or 402 of the Act (except exemptions under section 416(b)(7)) shall state whether the authority sought is governed by a bilateral agreement or by principles of comity and reciprocity. Applications by foreign carriers shall state whether the applicant's homeland government grants U.S. carriers authority similar to that requested. If so, the application shall state whether the fact of reciprocity has been established by the Board and cite the pertinent finding. If the fact of reciprocity has not been established by the Board, the application shall include documentation to establish such reciprocity.

(d) *Emergency cabotage.* Applications under section 416(b)(7) of the Act shall, in addition to the information required in paragraphs (b) and (c) of this section, contain evidence showing that:

(1) Because of an emergency created by unusual circumstances not arising in the normal course of business, traffic in the markets requested cannot be accommodated by air carriers holding certificates under section 401 of the Act;

(2) All possible efforts have been made to accommodate the traffic requested by using the resources of such air carriers (including, for example, the

use of foreign aircraft, or sections of foreign aircraft, that are under lease or charter to such air carriers, and the use of such air carriers' reservation systems to the extent practicable);

(3) The authority requested is necessary to avoid undue hardship for the traffic in the market that cannot be accommodated by air carriers holding certificates under section 401 of the Act; and

(4) In any case where the inability to accommodate traffic in a market results from a labor dispute, the grant of the requested exemption will not result in an undue advantage to any party to the dispute.

(e) *Renewal applications.* An application requesting renewal of an exemption that is intended to invoke the automatic extension provisions of 5 U.S.C. 558(c) shall comply with, and contain the statements and information required by, Part 377 of this chapter.

(f) *Record of service.* An application shall list the parties served as required by § 302.403.

#### § 302.403 Service of application.

(a) *Manner of service.* An application for exemption shall be served as provided by § 302.8.

(b) *General requirements.* Except for an application for exemption from sections 403 and 404 of the Act, an applicant shall serve on the persons listed in paragraph (c) of this section a notice that the application has been filed, and, upon request, shall promptly provide those persons with copies of the application and any supporting documents. (Applicants filing CAB Form 302 may serve a copy of the form instead of a notice.) The notice must clearly state the authority sought, the due date for responsive pleadings, and that copies of the application will be supplied upon request. Responsive pleadings shall be filed in accordance with paragraph (c) of this section.

(c) *Person to be served.* (1) Applicants for scheduled interstate or overseas air transportation authority shall serve (i) all U.S. air carriers (including commuter air carriers) that publish schedules in the "Official Airline Guide" or the "Air Cargo Guide" for the city-pair market(s) specified in the application, (ii) local airport authorities at each point specified in the application, and (iii) any other person who has filed a pleading in a related proceeding under section 401 or 416 of the Act.

(2) Applicants for scheduled foreign air transportation authority shall serve (i) all U.S. air carriers (including commuter air carriers) that publish schedules for the country-pair market(s) specified in the application in the

"Official Airline Guide" or in the "Air Cargo Guide" and (ii) any other person who has filed a pleading in a related proceeding under section 401, 402, or 416 of the Act.

(3) Applicants for charter-only or nonscheduled-only authority shall serve any person who has filed a pleading in a related proceeding under section 401, 402, or 416 of the Act. However, applicants that file less than 16 days prior to the proposed start of service must also serve (i) those U.S. carriers (including commuter carriers) that are known to be operating in the general market(s) at issue and (ii) those persons who may be presumed to have an interest in the subject matter of the application.

(d) *Additional service.* The Board may, in its discretion, order additional service made on any other person.

#### § 302.404 Posting of application.

A copy of every application for exemption shall be posted in the Board's Docket Section and listed in the Board's weekly list of applications filed.

#### § 302.405 Dismissal or rejection of incomplete application.

(a) *Dismissal or rejection.* The Board may dismiss or reject any application for exemption that does not comply with the requirements of this part.

(b) *Additional data.* The Board may require the filing of additional data with respect to any application for exemption, answer, or reply.

#### § 302.406 Answers to applications for exemption.

Within 15 days after the filing of an application for exemption, any person may file an answer in support of or in opposition to the grant of a requested exemption. Such answer shall set forth in detail the reasons why the exemption should be granted or denied. An answer shall include a statement of economic data or other matters the Board is requested to officially notice, and shall be accompanied by affidavits establishing any other facts relied upon.

#### § 302.407 Replies to answers.

Within seven days after the last day for filing an answer, an applicant may file a reply to one or more answers.

#### § 302.408 Request for hearing.

The Board will not normally conduct formal hearings concerning applications for exemption. However, the Board may, in its discretion, order a hearing on an application. Any applicant, or any party opposing an application, may request a hearing. Such a request shall set forth in detail the reasons why the filing of

affidavits or other written evidence will not permit the fair and expeditious disposition of the application. A request relying on factual assertions shall be accompanied by affidavits establishing such facts. If the Board orders a hearing, the procedures in Subpart A of this part shall apply.

#### § 302.409 Exemptions on the Board's initiative.

The Board may grant exemptions on its own initiative when it finds that such exemptions are required by the circumstances and consistent with the public interest.

#### § 302.410 Emergency exemptions.

(a) *Applicability.* When required by the circumstances and consistent with the public interest, the Board may take action, without notice, on exemption applications prior to the expiration of the normal period for filing answers and replies. When required in a particular proceeding, the Board may specify a lesser time for the filing of answers and replies, and notify interested persons of this time period.

(b) *Applications.* (1) applications for emergency exemption need not conform to the requirements of Subparts A and D of this part (except as provided in this section and in § 302.402(d) concerning emergency cabotage requests). However, an application for emergency exemption must normally be in writing and must state in detail the facts and evidence that support the application, the grounds for the exemption, and the public interest basis for the authority

sought. In addition, the application shall state specific reasons that justify departure from the normal exemption application procedures. The application shall also identify those persons notified as required by paragraph (c) of this section. The Board may require additional information from any applicant before acting on an application.

(2) The Board will consider oral requests, including telephone requests, for emergency exemption authority under this section in circumstances that do not permit the immediate filing of a written application. All oral requests must, however, provide the information required in paragraph (b)(1) of this section, except that actual evidence in support of the application need not be tendered when the request is made. All oral requests must be confirmed by written application, together with all supporting evidence, within three business days of the original request.

(c) *Notice.* Except when the Board decides that no notice need be given, applicants for emergency exemption shall notify, as appropriate, those persons specified in § 302.403(c) of this subpart. Such notification shall be made in the same manner, contain the same information, and be dispatched at the same time, as the application made to the Board.

#### § 302.909 [Removed]

2. 14 CFR Part 302 would be amended by removing and reserving § 302.909.

#### PART 389—[AMENDED]

14 CFR Part 389 would be amended by removing and reserving Code 10, adding Codes 23a and 23b and revising Code 26 in § 389.25 to read:

#### § 389.25 Schedule of processing fees.

Code	Document	
	Foreign Air Transportation (U.S. and Foreign Carriers)	
	Exemption:	
23	Section 403	
23a	Docketed	53
23b	Undocketed	16
26	Filed less than 15 days before effective date requested.	17

#### PART 399—[AMENDED]

#### § 399.18 [Removed]

1. 14 CFR Part 399 would be amended by removing and reserving § 399.18.

(Secs. 101, 203, 204, 401, 402, 403, 404, 406, 412, 416, 901, 1001, 1002, 1005, Pub. L. 85-726, as amended, 72 Stat. 737, 742, 743, 754, 757, 758, 760, 770, 771, 783, 788, 794; 49 U.S.C. 1301, 1323, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1386, 1471, 1481, 1482, 1485; Reorganization Plan No. 3, 75 Stat. 837, 26 FR 5989; E.O. 11514, Pub. L. 91-90 (42 U.S.C. 4321); 84 Stat. 772, 39 U.S.C. 5402)

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

BILLING CODE 7038-01-M

CAB Form 302  
(9-84)UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D.C.APPLICATION FOR SHORT-TERM  
EXEMPTION AUTHORITY

(See Instructions on Reverse Side)

The applicant requests an exemption under §416(b) of the Act to conduct short-term exemption operations as provided for in Subpart D of Part 302, or as provided by Board order. Answers are due by \_\_\_\_\_.

1. Name of Applicant:

(For foreign applicants) Specify Nationality:

2. Send Exemption To:

a. Name and Address:

b. Telephone No.

3. Applicant seeks Exemption from the Section of the Act noted below:

 401       402       Other \_\_\_\_\_

4. To satisfy fitness eligibility requirements (see §302.401(b)(2), cite order number of effective certificate/permit \_\_\_\_\_; or cite docket number of pending certificate/permit application \_\_\_\_\_; and order number of effective exemption authority \_\_\_\_\_.

5. Dates of Flights Under This Exemption Application:

6. Planned Routing of Flights (indicate non-traffic stops by asterisks):

7. No. of Flights \_\_\_\_\_ and type:

 Passenger  
 Scheduled

 Cargo  
 Charter

 Mail  
 Nonscheduled (cargo)

For passenger flights: number of passengers to be carried \_\_\_\_\_.

If cargo to be carried, weight and description of cargo:

8. Aircraft Make, Model, and Capacity:

9. Country in Which Aircraft is Registered:

10. If application is being filed late, state reasons for lateness:

11. If applicant is confirming an oral request, state date requested \_\_\_\_\_.

(continue on back)

DO NOT WRITE -- FOR OFFICIAL USE ONLY

Disposition of Application:

- 
- Approved.
- 
- 
- Approved, subject to condition(s) on reverse.
- 
- 
- Disapproved/Dismissed/Rejected for reason(s) cited on reverse.

Under delegated authority \_\_\_\_\_

Effective from \_\_\_\_\_ to \_\_\_\_\_

Director, Bureau of International Aviation

Operations performed under this exemption are subject to the terms, conditions and limitations of the applicant's certificate/permit, to Part 121/129 of the Federal Aviation Regulations and any additional terms or conditions attached and/or specified on reverse.

12. Purpose of Flights:

13. Public Interest Basis for Authority Sought:

14. For Foreign Applicants Only -- Does the nation which is the domicile of the applicant grant to United States carriers a privilege similar to that requested herein? \_\_\_\_\_  
If so, has the fact of such reciprocity been established with the Civil Aeronautics Board? \_\_\_\_\_  
If the fact has not been established with the Civil Aeronautics Board, provide documentation to establish such reciprocity.

15. Other Information Requested by the Board, or Additional Information Applicant Wishes the Board to Officially Notice:

#### CERTIFICATION

I hereby certify that the information contained herein is true and correct to the best of my knowledge, and that the parties on the attached list were served a copy of this application in accordance with Subpart D of Part 302:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature and title of authorized officer)

#### DO NOT WRITE - FOR OFFICIAL USE ONLY

Exercise of this authorization is subject to the following condition(s)  
OR Application is disapproved/dismisssed/rejected for the following reason(s):

#### INSTRUCTIONS

1. Prepare an original and two copies of this application according to Subpart D of Part 302 of the Board's Regulations, or order of the Board requiring the use of this form. If extra space is required to complete an item, continue on a separate sheet of paper.

2. Send the application to: "Civil Aeronautics Board, Bureau of International Aviation, Washington, D.C. 20428. Attention: Regulatory Affairs Division, B-58. If required by regulation or order, also send a copy of application to Director of Flight Operations, Federal Aviation Administration, Washington, D.C. 20591.

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

[LR-144-84]

**Limitation on Aggregate Amount of Private Activity Bonds; Proposed Rulemaking****AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** This document provides proposed regulations that relate to the tax exempt status of private activity bonds. Changes to the applicable tax law were made by the Tax Reform Act of 1984 (Pub. L. 98-369; 98 Stat. 915). These regulations affect all purchasers and governmental issuers of tax exempt private activity bonds. In addition, in the Rules and Regulations portion of this Federal Register, the Internal Revenue Service is issuing temporary regulations that relate to the tax exempt status of private activity bonds. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by December 4, 1984.

The regulations are proposed to be effective, in general, for obligations issued after December 31, 1983.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-144-84), Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** Mitchell H. Rapaport of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3590).

**SUPPLEMENTARY INFORMATION:****Background**

The temporary regulations in the Rules and Regulations portion of this issue of the Federal Register add new §§ 1.103(n)-1T through 1.103(n)-6T to Part 1 of Title 26 of the Code of Federal Regulations. The final regulations, which this document proposes to be based on those temporary regulations, would be added to Part 1 of Title 26 of the Code of Federal Regulations. Sections 1.103(n)-1T through 1.103(n)-6T would become § 1.103-17. For the text of the temporary regulations, see FR Doc. 84-26507 (T.D.

7981) published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations explains the addition to the regulations.

The regulations interpret the provisions of section 103(n) of the Code, which provides that a private activity bond issued as part of an issue shall be treated as an obligation not described in section 103(a) if the aggregate amount of bonds issued by the issuing authority during the calendar year exceeds such issuing authority's private activity bond limit for such calendar year.

These regulations are proposed to be issued under the authority contained in section 103(n) and section 7805 of the Internal Revenue Code (98 Stat. 915, 26 U.S.C. 103(n); 68A Stat. 917, 26 U.S.C. 7805).

**Non-Applicability of Executive Order 12291**

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

**Regulatory Flexibility Act**

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6.).

**Drafting Information**

The principal author of these proposed regulations is Mitchell H. Rapaport of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

**Comments and Requests for a Public Hearing**

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held,

notice of the time and place will be published in the Federal Register. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 350(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests persons submitting comments to OMB also to send copies of the comments to the Service.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-26508 Filed 10-2-84; 4:22 pm]

BILLING CODE 4830-01-M

## 26 CFR Part 1

[LR-169-79]

**Investment Credit for Commuter Highway Vehicles****AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to special rules for computing the investment credit for commuter highway vehicles. The Energy Tax Act of 1978 enacted special rules for determining the amount of that credit and for the recapture of that credit. The regulations would provide the public and Internal Revenue Service personnel with the guidance needed to comply with and administer the law.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by December 4, 1984. The amendments are proposed to be effective for commuter highway vehicles acquired and placed in service on or after November 9, 1978 and before January 1, 1986.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-169-79), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Michel A. Dazé of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (202-566-3458).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 46(c)(6) and 47(a)(4) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 241 of the Energy Tax Act of 1978 (92 Stat. 3192) and are to be issued under the authority contained in Code sections 38(b) (76 Stat. 963; 26 U.S.C. 38(b)) and 7805 (68A Stat. 917; 26 U.S.C. 7805)

**Commuter Highway Vehicle**

A commuter highway vehicle qualifies for an investment credit equal to 10 percent of the full cost or basis of the vehicle, as long as the vehicle has a useful life of 3 years or more. If the vehicle is section 38 property but does not qualify as a commuter highway vehicle, it would not be eligible for the full investment credit unless it is at least five-year recovery property, or if not recovery property, it has a useful life of seven years or more. A commuter highway vehicle is defined in section 46(c)(6)(B). The vehicle must have a seating capacity of eight adults, determined without regard to the driver's seat. Furthermore, the taxpayer must reasonably expect that at least 80 percent of the vehicle's mileage use will be to provide commuter transportation. Commuter transportation is transportation provided to the taxpayer's employees between their residences and their places of employment. This transportation must be provided on trips during which the number of employees transported for this purpose is at least one-half of the adult seating capacity. A leased vehicle does not qualify under section 46(c)(6)(B) as a commuter highway vehicle for a lessor if used to transport the employees of the lessee between their residences and places of employment. To qualify for the credit, the commuter highway vehicle must be acquired and placed in service on or after November 9, 1978 and before January 1, 1986. In addition, the taxpayer must elect to have the vehicle treated as a commuter highway vehicle.

**Recapture**

Section 47(a)(4) provides for a recalculation of the investment credit if the vehicle is not used as a commuter highway vehicle. That use is measured according to the percentage of total mileage driven for commuting purposes (as defined in proposed § 1.46-10(d)). As noted above, the percentage must equal 80 percent or more; otherwise, the investment credit will be recalculated as

if the vehicle were never a commuter highway vehicle.

The percentage of commuter miles is determined on a taxable-year basis, taking into account all mileage driven in each taxable year any portion of which falls within the first 36 months of the vehicle's operation.

**Regulatory Flexibility Act and Executive Order 12291**

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Comments and Requests for a Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

**Drafting Information**

The principal author of these proposed regulations is Yerachmiel E. Weinstein of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other

offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

**List of Subjects in 26 CFR Part 1**

Income taxes, Tax liability, Tax rates, Credits.

**Proposed Amendments to the Regulations**

The proposed amendments to 26 CFR Part 1 are as follows:

**PART 1—[AMENDED]**

**Paragraph 1.** A new § 1.46-10 is added in the appropriate place. As added, the new section reads as follows:

**§ 1.46-10 Commuter highway vehicles.**

(a) *In general.* Section 46(c)(6) provides that the applicable percentage to determine qualified investment under section 46(c)(1) for a qualifying commuter highway vehicle is 100 percent. A qualifying commuter highway vehicle is a vehicle (defined in paragraph (b) of this section)—

- (1) Which is acquired by the taxpayer on or after November 9, 1978,
- (2) Which is placed in service by the taxpayer before January 1, 1986, and
- (3) With respect to which the taxpayer makes an election under paragraph (g) of this section.

(b) *Definition of commuter highway vehicle.* A commuter highway vehicle is a highway that meets the following requirements:

(1) The vehicle is section 38 property in the hands of the taxpayer. The rule of section 48(d), allowing a lessor to elect to treat the lessee of new section 38 property as having acquired the property, applies to commuter highway vehicles. If the vehicle is leased and that election is made, the lessee is treated as the taxpayer under this section. However, if that election is not made, the lessor, and not the lessee, is treated as the taxpayer under this section.

(2) The vehicle must meet the seating capacity requirement of paragraph (c) of this section; and

(3) The taxpayer reasonably expects to meet the commuter use requirement of paragraph (d) of this section for at least the first 36 months after the vehicle is placed in service.

(c) *Seating capacity.* A commuter highway vehicle must have a seating capacity of at least 8 adults in addition to the driver's seat.

(d) *Commuter use requirement.* A vehicle meets the commuter use requirement only if at least 80 percent of the miles the vehicle is driven are for trips to transport the taxpayer's

employees between their residences and their places of employment. A trip for this purpose includes driving the vehicle before or after employees are in the vehicle, so long as the mileage driven is necessary either to pick up or drop off passengers or to park the vehicle in its regular parking space. A trip does not include miles driven solely for maintenance or to refuel the vehicle. A trip is not considered to transport the taxpayer's employees between their residences and their places of employment unless at least one-half the seating capacity (defined in paragraph (c) of this section) is used to seat employees of the taxpayer. In no event is the driver counted as an employee of the taxpayer.

(e) *Definition of employee.* An employee in this section is the same as in section 3121 (d) (definition of employee for withholding purposes).

(f) *Transportation between employee's residence and place of employment.* An employee is transported between that employee's residence and place of employment even if that place of employment is not the same as any of the other employees transported, and even if picked up or dropped off at some central point between that residence and place of employment. An employee is not transported between that employee's residence and place of employment if the transportation is of the type that a deduction would be allowed under § 1.162-2 were the employee providing it, such as the transportation from one work site to another after beginning work for the day.

(g) *Election.* A taxpayer must elect to have the vehicle treated as a qualifying commuter highway vehicle on the return for the taxable year in which the vehicle is placed in service. The election may be made only if the vehicle actually meets the commuter use requirement under paragraph (d) of this section for that taxable year. It must be made on or before the due date (including extensions) of that return. The election is effective as of that due date.

**Par. 2.** Section 1.47-1 is amended by:

1. Inserting, in the first sentence of paragraph (a)(1)(i) of that section, "or is a qualifying commuter highway vehicle (as defined in paragraph (a) of § 1.46-10) which undergoes a change in use (as defined in paragraph (m)(2) of this section)" immediately following "(as defined in paragraph (g) of § 1.46-3)", and

2. By reserving paragraphs (i), (j), (k), and (l) and by adding a new paragraph (m) to read as follows:

**§ 1.47-1 Recomputation of credit allowed by section 38.**

\* \* \* \* \*

(i) [Reserved].

(j) [Reserved].

(k) [Reserved].

(l) [Reserved].

(m) *Commuter highway vehicles—(1) Recomputed qualified investment.* (i) If a qualifying commuter highway vehicle (as defined in § 1.46-10(a)) undergoes a change in use but does not cease to be section 38 property, qualified investment for that vehicle is recomputed as if the vehicle was section 38 property which is not a qualifying commuter highway vehicle for its entire useful life.

(ii) The following example illustrates this paragraph (m)(1).

*Example.* X Corporation, a calendar year taxpayer, acquired and placed in service on January 1, 1982, a qualifying commuter highway vehicle with a basis of \$10,000 and which qualified as three year recovery property under section 168(c)(2)(A)(i). The amount of qualified investment for the vehicle under section 46(c) (1) and (6) is \$10,000. For the taxable year 1982, X Corporation's credit earned was \$1,000 (10 percent of \$10,000) and X Corporation was allowed under section 38 a \$1,000 credit against its 1982 tax liability. During the taxable year 1984, the vehicle undergoes a change in use but does not cease to be section 38 property. The vehicle is treated as section 38 property which is not a qualifying commuter highway vehicle for its entire useful life. The recomputed qualified investment for the vehicle is \$6,000 (60 percent of \$10,000) and X Corporation's recomputed credit earned is \$600 (10 percent of \$6,000). The income tax imposed by chapter 1 of the Code on X Corporation for 1984 is increased by the \$400 decrease in its credit earned for 1982 (\$1,000—\$600).

(2) *Change in use—(i)* A qualifying commuter highway vehicle undergoes a change in use if the vehicle does not meet the commuter use requirement (as defined in § 1.46-10(d)) for each computation period.

(ii) Each of the following is a computation period:

(A) The period beginning on the date the vehicle was placed in service and ending on the last day of the taxpayer's taxable year in which the vehicle was placed in service;

(B) Each of the taxpayer's taxable years beginning after the date the vehicle was placed in service and ending before the end of the first 36 months after the vehicle was placed in service; and

(C) The period ending at the end of the first 36 months after the vehicle was placed in service and beginning on the first day of the taxpayer's taxable year in which the end of those first 36 months falls.

(iii) The following example illustrates this paragraph (m)(2).

*Example (1).* (a) Z Corporation, a calendar year taxpayer, acquired and placed in service a qualifying commuter highway vehicle on January 15, 1979. Z Corporation used the vehicle as set forth in the following table:

Taxable year ending	Total miles	Commuter miles	Ratio
1979.....	10,000	9,000	.90
1980.....	10,000	8,000	.80
1981.....	10,000	8,000	.80
1982 (1-14).....	1,000	100	.10

(b) The first computation period begins on the date the vehicle is placed in service, in this example 1-15-79, and ends 12-31-79. In that computation period, the ratio of commuter miles to total miles is .90 (9,000 miles ÷ 10,000 miles). Therefore, the vehicle meets the commuter use requirement for that period and has not undergone a change in use. Similar calculations for the computation periods 1-1-80 to 12-31-80 and 1-1-81 to 12-31-81 produce the same result.

(c) As of the computation period beginning 1-1-82 and ending 1-14-82, the ratio of commuter use to total mileage is .10 (100 miles ÷ 1,000 miles). Since that ratio is less than .80, the vehicle does not meet the commuter use requirement for the period and the vehicle has undergone a change in use.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-28498 Filed 10-4-84; 8:45 am]

BILLING CODE 4830-01-M

**NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES**

**45 CFR Part 1180**

**Institute of Museum Services; Federal Financial Assistance**

**AGENCY:** Institute of Museum Services, NFAH.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Institute of Museum Services issues proposed amendments to regulations relating to certain of its programs of Federal financial assistance. The regulations as amended implement the Museum Services Act. The amendments make technical and other changes in the eligibility conditions and other terms for the administration of the General Operating Support and Museum Assessment programs for museums and remove unneeded provisions.

**DATE:** Comments must be received on or before November 19, 1984.

**ADDRESS:** Comments should be addressed to Michele Rossi, Confidential Assistant to the Director, Institute of Museum Services, Room 510,

1100 Pennsylvania Ave., NW,  
Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:**  
Michele Rossi. Telephone: (202) 786-  
0536.

**SUPPLEMENTARY INFORMATION:**

**A. General Background**

The Museum Services Act ("the Act"), which is Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended on December 4, 1980 and May 31, 1984.

The purpose of the Act is stated in Section 202 as follows:

It is the purpose [the Museum Services Act] to encourage and assist museums in their educational role, in conjunction with formal systems of elementary, secondary, and post-secondary education and with programs of non-formal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic and scientific heritage, and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board and a Director.

The Act provides that the National Museum Services Board shall consist of fifteen members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from among the appointed members. Members are broadly representative of various museums, including museums relating to science, history, technology, art, zoos, and botanical gardens; of the curatorial, educational and cultural resources of the United States; and of the general public. In addition to the members appointed by the President, the following serve as members of the Board; the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, the Secretary of the Smithsonian Institution, and the Director of the National Science Foundation. The Board has the responsibility for establishing the general policies of the Institute. The Director is authorized, subject to the policy direction of the Board, to make grants under the Act to museums.

IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation). Pub. L. 97-100, December

23, 1981, Pub. L. 97-394, December 30, 1982, Pub. L. 98-306, May 31, 1984.

The Act lists a number or illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public and providing education programs to the public.

**B. Need for Amendments**

IMS regulations for the IMS General Operating Support (GOS) and Special Project Support (SP) programs were published in full on June 17, 1983 (48 FR 27727). Amendments were published for FY 1984 on April 10, 1984, 49 FR 14108 (miscellaneous amendments) and June 15, 1984, 49 FR 24731 (waiver of certain requirements). Regulations for the Museum Assessment Program were published on January 26, 1984 at 49 FR 3182. Further amendments to these regulations are needed in order to implement policy directions of the Board with respect to these programs.

**C. Amendment by Amendment Analysis**

Overall the amendments are designed to reduce applicant burden, simplify administration and provide needed clarification.

1. *Definition of "museum".* Amendment No. 1, revises § 1180.3(d) to clarify the status of institutions which carry out museum functions such as exhibition of objects to the general public but not as a primary purpose of the institution. Ordinarily institutions which fall within the statutory definition of museum in section 210 of the Museum Services Acts can demonstrate that they have as a primary purpose the exhibition of objects to the general public. Section 1180.3(d)(1) (as it would be revised by the amendment) expresses this principle and is reflective of language which has been included in IMS regulations since the inception of the program. Section 1180.3(d)(2) recognizes that some institutions which carry out museum functions as a significant, separate, distinct, and continuing portion of their activities may not be able to demonstrate such a primary purpose but nonetheless qualify as museums. Section 1180.3(d)(2) sets forth the information which such an institution must submit in order to establish its eligibility. Taken as a whole, the proposed section reflects the current practice of IMS and is designed to clarify the matter in light of Board consideration at its July 20 meeting.

2. *Eligibility.* Amendment No. 2 revises § 1180.5 (relating to eligibility and burden of proof) and removes current provisions relating to receipt of

Challenge Grants (§ 180.5(g)) and receipt of assistance in more than three out of five years (§ 1180.5(f)). Language in the Fiscal Year 1984 appropriation legislation precluded the enforcement of the rule relating to receipt of Challenge Grant funds (§ 1180.5(g)) on the ground that current levels of funding render it unnecessary. Similar language is contained in the current version of the Fiscal Year 1985 legislation. Language regarding receipt of GOS and Special Projects in the same year is removed since Special Projects will not be awarded in fiscal year 1985. See Amendment No. 3.

3. *Special Projects.* Amendment No. 3 removes sections in Subpart A of the IMS grants regulations relating to Special Projects as funds for this category of assistance will not be available in Fiscal Year 1985.

4. *Likely size of grants.* Section 1180.9(a) is amended by Amendment No. 4 to make clear that information regarding the likely size of grants will be contained in the Federal Register program announcement rather than in the regulations for each year. Because these figures are based on annual appropriation levels which may not be established until after the beginning of the fiscal year in question, inclusion of figures in the permanent regulations is impracticable.

5. *Deferral authority.* Amendment No. 5 is designed to continue the authority of the Director to defer the audit requirements for small museums previously published in the Federal Register, 49 FR 24731.

6. *Conforming Amendment.* Amendment No. 6 makes conforming amendments in § 1180.12 to reflect the removal of Special Projects provisions.

7. *Cost sharing.* A technical amendment is made to § 1180.16(b) to permit a museum to use information from its most recently completed fiscal year for which financial information is available in establishing the percentage of its non-federal operating income represented by the grant for which it is applying.

8. *Museum Assessment Program (MAP).* Amendment No. 8 revises regulations for the MAP to reflect changes in the program authorized by the Board. The changes will permit initiation of a new category of MAP assistance as well as facilitate simplification of program administration. The \$600 limitation on individual awards is replaced by a \$1,000 limitation.

**D. Invitation to Comment.**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before November 19, 1984, will be considered before the Director issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, at the Institute of Museum Services, Room 510, 1100 Pennsylvania Ave., NW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

**E. Executive Order 12291**

These proposed amendments have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

**F. Regulatory Flexibility Act Certification**

The Director certifies that these amendments will not have a significant economic impact on a substantial number of small entities.

To the extent that they affect States and State agencies they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These amendments will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, they will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision. They impose minimal requirements to ensure the proper expenditure of grant funds.

**List of Subjects in 45 CFR Part 1180**

Grant programs, Museums, National boards, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance No. 43.301, Museum Services Program)

Dated: September 24, 1984.

**Susan Phillips,**

*Director, Institute of Museum Services.*

Dated: September 24, 1984.

**C. Douglas Dillon,**

*Chairman, National Museum Services Board.*

The Institute of Museum Services proposes to amend Part 1180 of

Subchapter E of Chapter XI of Title 45 of the Code of Federal Regulations as set forth below:

**SUBCHAPTER E—INSTITUTE OF MUSEUM SERVICES****PART 1180—GRANTS REGULATIONS**

1. Section 1180.3(d) is revised to read as follows:

**§ 1180.3 Definition of museum.**

\* \* \* \* \*

(d)(1) Except as set forth in paragraph (d)(2) of this section, an institution exhibits objects to the general public for the purposes of this section if such exhibition is a primary purpose of the institution.

(2) An institution which does not have as a primary purpose the exhibition of objects to the general public but which can demonstrate that it exhibits objects to the general public on a regular basis as a significant, separate, distinct, and continuing portion of its activities, and that it otherwise meets the requirements of this section, may be determined to be a museum under this section. In order to establish its eligibility, such an institution must provide information regarding the following:

(i) The number of staff members devoted to museum functions as described in paragraph (a) of this section.

(ii) The period of time that such museum functions have been carried out by the institution over the course of the institution's history.

(iii) Appropriate financial information for such functions presented separately from the financial information of the institution as a whole.

(iv) The percentage of the institution's total space devoted to such museum functions.

(v) Such other information as the Director requests.

(3) The Director uses the information furnished under paragraph (d)(2) of this section, in making a determination regarding the eligibility of such an institution under this section.

2. Section 1180.5 is revised to read as follows:

**§ 1180.5 Eligibility and burden of proof—Who may apply.**

(a) A museum located in any of the fifty States of the Union, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, Guam, or the District of Columbia may apply for a grant under the Act.

(b) No museum is eligible to apply for funding available under the Act unless it

has provided museum services, including exhibiting objects to the general public on a regular basis, for at least two years prior to application.

(c) A public or private nonprofit agency which is responsible for the operation of a museum may, if necessary, apply on behalf of the museum.

(d) A museum operated by a department or agency of the Federal Government is not eligible to apply.

(e) An applicant has the burden of establishing that it is eligible for assistance under these regulations.

**§§ 1180.8, 1180.11(f) and 1180.14 [Removed]**

3. Sections 1180.8, 1180.11(f), and 1180.14 (relating to Special Projects) are removed and reserved. The table of contents is revised accordingly.

4. Section 1180.9(a) is revised to read as follows:

**§ 1180.9 Likely size of grants and allocation of funds among activities.**

(a) It is anticipated that no museum will receive for General Operating Support more than an amount to be specified by notice in the *Federal Register* for each fiscal year.

\* \* \* \* \*

5. Section 1180.11(c)(4) is revised to read as follows:

**§ 1180.11 Basic requirements which a museum must meet to be considered for funding.**

\* \* \* \* \*

(c) \* \* \*

(4) The Director is authorized to defer the audit requirement set forth in subparagraph (2) in the case of a museum with non-federal operating income of \$50,000 or less, exclusive of the value of non-cash contributions (in the appropriate fiscal period preceding the fiscal period for which the determination is made) if the Director finds that exceptional circumstances justify a deferral and that the grant of the deferral will not be inequitable to other applicants. A deferral may be granted only upon those conditions and in light of those assurances which the Director deems appropriate in order to ensure that the purposes of this paragraph are achieved. The authority to grant deferrals, unless renewed under this subparagraph, expires on September 30, 1985.

6. Section 1180.12 is revised to read as follows and the table of contents is revised accordingly:

**§ 1180.12 How applications are judged.**

(a) To select grantees and determine the amount of their awards, IMS rates competitive applications under the applicable criteria stated in § 1180.13. Normally, these applications are first evaluated by field reviewers, panels of experts, or both. Final determinations as to the award of grants are made by the Director after review by the Board.

(b) To achieve diversity in the distribution of assistance, the Institute may consider the location, size and discipline of the applicant in addition to the criteria in § 1180.13.

7. Section 1180.16(b) is revised to read as follows:

**§ 1180.16 IMS share of the cost of a proposal.**

(b) Subject to the amount specified under § 1180.9(a), IMS normally does not make grants for more than: (1) 10 percent of a museum's non-federal operating income for its most recently completed fiscal year for which financial information is available or (2) \$5,000, whichever is greater. (See § 1180.11) A different figure may be specified by notice published in the *Federal Register*. Non-federal operating income may be increased by an amount reflecting the reasonable and conservative value of volunteer services contributed in such most recently completed fiscal year

8. Subpart D of Part 1180 is revised to read as follows and the table of contents is revised accordingly:

**Subpart D—Museum Assessment**

Sec.	
1180.70	Purpose of program.
1180.71	Eligibility.
1180.72	Allowable costs.
1180.73	Form of assistance; limitation on amount.
1180.74	Conditions of participation.
1180.75	Funding and award procedures.
1180.76	Responsibility of a museum.

**Subpart D—Museum Assessment****§ 1180.70 Purpose of program.**

The Director of the Institute of Museum Services makes grants under this subpart to assist museums in carrying out institutional assessments. The grants enable museums to obtain technical assistance in order to evaluate their programs and operations by generally accepted professional standards. The Director may make grants for separate categories of assessment activities and establish conditions for receipt of assistance for such separate categories.

**§ 1180.71 Eligibility.**

(a) A museum as defined in § 1180.3 may apply for assessment assistance under this subpart.

(b) A museum which receives a grant for assessment assistance under this subpart for a fiscal year may not receive another grant for the same category of assessment assistance in the same or a subsequent fiscal year.

**§ 1180.72 Allowable costs.**

A museum may use a grant under this subpart for expenses of institutional assessment, such as registration fees, surveyor honorariums, travel and other expense of a surveyor, and technical assistance materials.

**§ 1180.73 Form of assistance; limitation on amount.**

(a) The Director makes payments to a museum under this subpart in advance.

(b) The amount of a grant to a museum under this subpart may not exceed \$1,000.

**§ 1180.74 Conditions of participation.**

The Director considers an application (on a form supplied by IMS) by a museum for a grant under this subpart for assessment assistance only of:

(a) The museum requests assessment from an appropriate professional organization as defined in this section, and

(b) That organization notifies IMS that the request for the assessment assistance is complete and that the museum is eligible to participate.

An appropriate professional organization for purposes of this subpart means: (1) The American Association of Museums or (2) other professional organizations that are determined to be capable of arranging for a program of assessment services for a category of museums and are so designated by notice published in the *Federal Register*.

**§ 1180.75 Funding and award procedures.**

(a) The Director approves applications meeting the requirements of this subpart on a first-come, first-served basis, in the order in which it is determined by IMS that such requirements (including all application requirements) have been met, until a date in the fiscal year to be established by publication in the *Federal Register*.

(b) There are no selection criteria.

(c) Section 1180.16 (IMS share of the cost of a proposal) does not apply to grants under this subpart.

(d) A museum receiving assistance under this subpart need not submit a financial report of a performance report.

(e)(1) Except as provided in § 1180.71 and paragraph (e)(2) of this section

Subparts A, B, and C of Part 1180 of Title 45 CFR do not apply to the Museum Assessment Program.

(2) The following sections do apply to the Museum Assessment program: Sections 1180.5(a); 1180.5(c); 1180.5(d); 1180.5(e); 1180.15; 1180.44; 1180.47; and 1180.51-1180.56.

**§ 1180.76 Responsibility of a museum.**

Except in unusual circumstances, a museum which receives a grant under this subpart must take the steps normally expected of it to complete the assessment process for which it has received assistance. Section 1180.13(i) (a criterion for evaluation of general operating support applications) applies to the use of funds under this subpart.

(20 U.S.C. 961-968)

[FR Doc. 84-26519 Filed 10-4-84; 8:45 am]

BILLING CODE 7036-01-M

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 68**

[CC Docket No. 84-885; FCC 84-424]

**Deregulatory Options and Streamlined Application Processing**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is proposing several changes in its Part 68 equipment registration program that would streamline application processing and eliminate unnecessary or outmoded regulations. The Commission has proposed to eliminate the mandatory twenty-day waiting period contained in § 68.202, 47 CFR 68.202, prior to granting Part 68 applications, and the requirement of § 68.106(a) that consumers report to telephone companies the FCC registration number and ringer equivalence number of terminal equipment. Equipment-to-equipment specifications contained in § 68.502, 47 CFR 68.502, and environmental stress tests for equipment packaging contained in § 68.302(c)(1), 47 CFR 68.302(c)(1), are also proposed for elimination.

**DATES:** Interested parties may file comments on or before November 5, 1984, and reply comments on or before November 20, 1984.

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

**FOR FURTHER INFORMATION CONTACT:** Patrick Donovan, Common Carrier Bureau, Federal Communications

Commission, Washington, D.C., 20554, (202) 634-1832.

#### SUPPLEMENTARY INFORMATION:

##### List of Subjects in 47 CFR Part 68

Communications equipment,  
Communications common carriers,  
Administrative practice and procedure.

##### Notice of Proposed Rulemaking

In the Matter of Revisions to Part 68 of the Commission's Rules: Deregulatory Options and Streamlined Application Processing With Respect to Part 68 of the Commission's Rules; CC Docket No. 84-885.

Adopted: September 13, 1984.

Released: September 26, 1984.

By the Commission: Commissioner Quello concurring and issuing a statement; Commissioners Rivera and Patrick absent.

1. Part 68 of the Commission's rules governs the terms and conditions for connection of customer provided terminal equipment to the telephone network. Part 68 is designed to assure consumers and manufacturers that their equipment may be connected to the network without causing harm.<sup>1</sup> These rules concern generally conditions of use of terminal equipment, registration procedures, conditions for registration, and complaint procedures. The Commission has reviewed Part 68 and has determined that certain rules may no longer be needed. Deletion of these rules will streamline application processing, and reduce the regulatory burden on both registration applicants and the public. The Commission has previously indicated its intention to streamline Part 68. *A Reexamination of Technical Regulations*, Gen. Docket 893-114, FCC 83-67, released March 18, 1983. See also *Federal Communications Commission List of Rules and Regulations to be Reviewed Pursuant to section 610 of the Regulatory Flexibility Act During 1983-1984*, Gen. Docket No. 84-361, FCC 84-135, released April 12, 1984.

2. *Elimination of Public Notice Period.* Section 68.202(a) of the rules provides that the Commission will issue public notices of the filing and grant of applications for equipment registration and that no grant will be made until twenty days from the date of the public notice of the filing of the application. Section 68.204 provides that comments on the application may be filed during the twenty-day public notice period and replies within ten days of the filing date of comments. Under this framework, the Commission currently receives, processes and grants approximately

three thousand Part 68 applications per year. An application is initially reviewed for sufficiency and completeness, and is generally either accepted for filing and placed on public notice for the twenty-day period or returned to the applicant for corrections. It is rare that an application will be accepted for filing and not subsequently granted. Some Part 68 applications, such as those for minor modifications of registered equipment, do not even require Commission approval. Indeed, in the last five years virtually no comments have been filed on any Part 68 application, except where specifically requested by the Commission by separate public notice. See Public Notice, October 14, 1982, Viking Electronics, Inc., File No. 100-CX-82 concerning registration of coin-operated telephones.

3. In view of this experience, we believe that the § 68.202(a) twenty-day public notice period is no longer justified. Instead, we propose to issue public notice of Part 68 applications accepted for filing and, once processing has been completed, to issue a final public notice containing the registration number. Under this procedure, streamlined by removal of the twenty-day waiting period, a typical Part 68 application would be granted at least twenty days earlier, i.e. processing would commence on acceptance of the application for filing. We believe that the complaint procedures set forth in Subpart E of Part 68 are adequate to protect the network from interconnection of potentially harmful equipment. *Automation Electronics, Inc.*, 63 F.C.C. 2d 940 (1977).

4. *Notification to the telephone company of connection of customer provided equipment.* Under § 68.106(a) of the rules, a customer is required to notify the telephone company prior to connection or final disconnection of customer provided terminal equipment, and to provide the telephone company the FCC registration number and ringer equivalence number.<sup>2</sup> At the time this rule section was adopted, there had been no experience with the Part 68 registration program or wide-spread provision and connection of terminal equipment by consumers. Section

<sup>2</sup> Section 68.106(a), 47 CFR 68.106(a), states in part: Customers connecting terminal equipment or protective circuitry to the telephone network shall, before such connection is made, give notice to the telephone company of the particular line(s) to which such connection is made, and shall provide to the telephone company the FCC registration and Ringer Equivalence of the Registered terminal equipment or registered protective circuitry. The customer shall give notice to the telephone company upon final disconnection of such equipment or circuitry from the particular line(s).

68.106(a) was adopted as a precaution to insure that only properly registered equipment would be connected to the network. Now that the FCC equipment registration program is well established, and there is little or no market for unregistered terminal devices, we do not believe that there is a significant risk that without § 68.106(a) consumers will connect unregistered or otherwise harmful devices to the telephone network. Furthermore, it is unclear to what extent this provision is currently being enforced by carriers. While the ringer equivalence number on registration labels remains useful, particularly to consumers, it is our understanding that telephone carriers generally do not maintain records on the total ringer equivalence on each line.<sup>3</sup> In short, our experience suggests that the utility of the reporting requirements of § 68.106(a) no longer warrants the rule's existence as a mandatory requirement. We believe that an unnecessary burden on the consumer and the carrier can be eliminated by amending § 68.106(a) to provide that the customer must provide the carrier with the FCC registration number and ringer equivalence number only when requested to do so, e.g. where the carrier has reason to believe that unregistered or malfunctioning terminal equipment may be connected. If deemed necessary by the carrier, consumer information of the type routinely supplied in introductory portions of telephone directories can adequately educate the consumer of the need to employ only FCC registered terminal equipment and to comply with ringer equivalence limitations. See footnote 3, *infra*. With these safeguards, the carrier will be able to continue to maintain the integrity of the network. We request comment on this proposed rule change.<sup>4</sup>

<sup>3</sup> "Ringer equivalence" relates to the current drawn from the telephone company facilities by a terminal device. In most areas of the United States, telephone carriers provide sufficient ringing current to ring up to five standard telephones, i.e. a ringer equivalence of five. If more than five telephones are placed on a line, the telephone company cannot guarantee proper ringing.

<sup>4</sup> In Petitions Seeking Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network (First Report and Order), CC Docket No. 81-216, FCC 84-182, released May 18, 1984, reconsideration pending, the Commission amended Part 68 to create *inter alia* notice/documentation requirements for subscriber installation, connection, or reconfiguration of premises wiring. *Id.* paras. 57-62. See 47 CFR 68.213(e). Comments are solicited on whether this issue should be revisited by the Commission in view of our proposal to eliminate the notice requirements of § 68.106(a). Commenting parties are also requested to advise the Commission of whether a prior notification requirement should be maintained for registered telephone systems, as opposed to

<sup>1</sup> For a history of Part 68, see Memorandum Opinion and Order in Docket Nos. 19528, 20774 and 21182, 70 F.C.C. 2d 1800 (1979).

5. *Connectors.* Subpart F of Part 68 sets forth technical descriptions of authorized plugs, jacks and adapters for network connections of registered terminal equipment. These include descriptions of equipment-to-equipment connections which were originally intended to assure a means of connection of customer provided terminal equipment to other equipment provided by the telephone carrier in conjunction with transmission services. However, with the detariffing of customer premises equipment (CPE), telephone companies no longer provide terminal equipment in conjunction with transmission services.<sup>5</sup> The interconnection of various components of CPE, therefore, is not properly a concern of Part 68. Accordingly, we propose to eliminate the technical descriptions set forth in rules § 68.502(a)(2)-(3), 68.502(b)(2)-(6), 68.502(c)(2), 68.502(d)(2)-(4), 68.502(e)(7)-(8), and descriptions in § 68.502(f)(1) pertaining to jacks referred to as RJ33M, RJ34M, and RJ35M. Comments are sought on this proposed rule change. The Commission does not envision at this time elimination of the standard modular jack specifications contained in § 68.500 or network connection specifications set forth in § 68.502.

6. *Environmental Shock Tests.* Section 68.302 imposes as a condition of registration that equipment comply with the technical standards for registration both before and after the administration of certain enumerated electrical and mechanical stresses. These stresses are intended primarily to assure compliance of the equipment with Part 68 following shipment from the manufacturer to the customer. We believe that the marketplace itself is an adequate mechanism for assuring that devices are

constructed and packaged to survive handling common in the telephone equipment industry. The same incentive of the manufacturer to produce a device that functions on delivery serves to assure the integrity of the device under Part 68 with respect to shock stresses. We propose, therefore, to delete § 68.302(c)(1) of the rules.

#### Regulatory Flexibility Act Initial Analysis

7. *Reason for Action.* The Commission is initiating this rulemaking proceeding because of the need to eliminate unnecessary rules and regulations and improving application procedures with respect to Part 68 of the Commission's rules.

8. *The objective.* The objective of this notice of proposed rulemaking is to initiate a rulemaking and seek public comment on proposed amendments to Part 68 indicated in this decision. The Commission will adopt amendments to Part 68 which will eliminate unnecessary regulations and streamline and improve application processing.

9. *Legal Basis.* Legal action as proposed is in furtherance of Section 1 of the Communications Act of 1934, as amended which requires the Commission to ensure in so far as possible a rapid, efficient nationwide telecommunications system.

10. *Description, potential impact and number of small entities affected.* The Commission's proposal to eliminate the twenty day mandatory waiting period for application processing will benefit small terminal equipment manufacturers by speeding disposition of Part 68 applications. Similarly, elimination of unnecessary rules and regulations will relieve the regulatory burden to which small businesses would otherwise be subject.

11. *Recording, recordkeeping and other compliance requirements.* No additional paperwork will be required by the proposals set forth in this proceeding.

12. *Federal rules which overlap, duplicate or conflict with this rule.* None.

13. *Any significant alternatives minimizing impact on small entities and consistent with stated objective.* The Commission's alternative would be to retain unnecessary rules and regulations and to not take steps to improve application processing. For the reasons indicated in this decision, we believe these alternatives are inconsistent with the public interest.

14. *Comments are Solicited.* Written comments are requested on the Initial Regulatory Flexibility Analysis. These

comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this notice of proposed rulemaking, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

#### Ex Parte Presentations

15. For purposes of this non-restricted informal rulemaking proceeding members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft order proposing a substantive disposition of such proceeding is placed on the Commission's Sunshine Agenda. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and oral arguments) between a person outside the Commission and a Commissioner or a decision-making member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation which must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official(s) receiving the oral presentation. Each *ex parte* presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally § 1.1231 of the Commission's rules, 47 CFR 1.1231. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

16. Accordingly, pursuant to sections 1, 4, 201-05, 215, 218, 220, 313, 309(e)-(h) and 412 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201-205, 215, 218, 220, 313, 309(e)-(h), and 412, and 5 U.S.C. 553, notice is hereby

simple terminal devices such as telephones, answering machines, and speakerphones. The registration number for registered telephone systems is coded to indicate, to the telephone company and others, the degree of network protection offered by the system and by devices connected behind the system.

<sup>5</sup> See Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 F.C.C.2d 384 (1980) (Final Decision), reconsideration, 84 F.C.C.2d 50 (1980), further reconsideration, 88 F.C.C.2d 512 (1981), *aff'd sub nom.* CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied 103 S. Ct. 2109 (1983); Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry), Report and Order, CC Docket No. 81-893, FCC 83-551, released December 15, 1983, reconsideration pending. Some embedded CPE owned by independent telephone companies continues to be provided on a tariffed basis. The Commission has indicated in CC Docket No. 81-893 that it will create a framework for the detariffing of this CPE. Notice of Proposed Rulemaking, 94 F.C.C.2d 76 (1983), Second Further Notice of Proposed Rulemaking, FCC 84-238, released June 20, 1984.

provided of proposed rule changes in Part 68 of the Commission's rules, 47 CFR Part 68, in accordance with the discussion and delineation of issues herein.

17. It is further ordered, that the Secretary shall cause a copy of this order to be printed in the **Federal Register**.

18. Interested parties may file comments on or before November 5, 1984, and reply comments on or before November 20, 1984. In accordance with § 1.419 of the Commission's rules, 47 CFR 1.419, an original and five copies of all comments shall be furnished to the Commission. All submissions in this proceeding will be available for public inspection during regular business hours in the Commission's public reference room.

(Secs. 1, 4, 201-05, 48, Stat., as amended, 1086, 1082; 47 U.S.C. 154, 201-205)

Federal Communications Commission.

William J. Tricarico,  
Secretary.

## Appendix

### PART 68—[AMENDED]

It is proposed to Amend Part 68 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations, Part 68) as follows:

1. Section 68.106(a) is revised as follows:

#### § 68.106 Notification to telephone company.

(a) *General.* The telephone company may request the FCC Registration Number and Ringer Equivalence Number of all terminal equipment and protective circuitry connected to particular identified line(s).

#### § 68.202 [Amended]

2. Section 68.202(a) is amended by removing the sentence: "No grant will issue before 20 days from the date of the public notice of the filing of the application."

#### § 68.204 [Removed]

3. Section 68.204 is removed.

#### § 68.302 [Amended]

4. Section 68.302(c)(1.) is removed.  
5. In § 68.504, paragraphs (a) and (b) are removed. The section heading is revised, and an introductory paragraph is added, and the Unilateral Patent License Agreement is retained. The new section heading and introductory paragraph read as follows:

#### § 68.504 Unilateral Patent License Agreement.

The unilateral license agreement set out herein shall be used for all patent

license agreements for standard plugs and jacks.

September 13, 1984.

#### Concurring Statement of FCC Commissioner James H. Quello

In re: Notice of Proposed Rulemaking to streamline application processing under Part 68 of the rules and to eliminate unnecessary regulations.

While I am generally in favor of streamlining our processes for the benefit of the public and this agency, I am concerned that here we may be proposing to walk away from some rules that have continued utility. Performing my own imprecise cost/benefit analysis, it seems likely that some of the rules which this *Notice* proposes to eliminate might well have benefits far above their costs.

For example, equipment-to-equipment connections are now made in a standard manner which, it seems to me, permits the public to be confident that when telephone attachments are purchased they can be quickly and easily interconnected. I fail to see the burden imposed by such equipment-to-equipment rules. Also, certain stress tests now are required for packaged equipment so as to increase the likelihood that it will reach the consumer still in compliance with our registration program. I find this burden to be very reasonable and the benefit considerable.

Perhaps I can be persuaded by the comments in this proceeding that the costs are higher than my preliminary analysis indicates or that the benefits are not significant. I will review those comments with interest.

[FR Doc. 84-26446 Filed 10-4-84; 8:48 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

[MM Docket No. 84-688; RM-4718]

#### FM Broadcast Station in University, MS; Order Extending Time for Filing Reply Comments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of reply comment period.

**SUMMARY:** Action taken herein, at the request of the University of Mississippi, extends the reply comment period to respond to a proposal to assign FM Channel 221A to University, Mississippi.

**DATE:** Reply comments are due on or before October 4, 1984.

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

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

#### SUPPLEMENTARY INFORMATION:

In the matter of amendment of section § 73.202(b), table of assignments, FM

Broadcast Stations. (University, Mississippi) (MM Docket No. 84-688, RM-4718).

#### Order Granting Extension of Time To File Reply Comments

Adopted: September 25, 1984.

Released: September 27, 1984.

By the Chief, Policy and Rules Division.

1. On July 10, 1984, the Commission adopted the *Notice of Proposed Rule Making*, 49 FR 29419, published July 20, 1984, proposing the assignment of FM Channel 221A to University, Mississippi, as that community's first local FM service. Comments were filed September 6, 1984, and the date for filing reply comments is September 20, 1984.

2. On September 17, 1984, counsel for the University of Mississippi ("University"), requested a two-week extension of time for filing reply comments. University states that comments filed by the Mississippi Authority for Educational Television ("Authority"), seeking an alternative channel for University, has prompted representatives of the University and Authority to schedule a meeting to work out the conflict between the two organizations. University believes that at the conclusion of the meeting, both parties will have reached a mutually satisfactory agreement and that the reply comments will represent the consensus of the parties and eliminate the need for adversary pleadings.

3. Generally, it is the policy of the Commission not to routinely grant extension requests, pursuant to the provisions of § 1.46(a) of the Rules. However, we believe it would be in the public interest to provide an extension here to permit the parties to come to an agreement in order to aid the Commission in resolving the issues in this proceeding.

4. Accordingly, it is ordered, that the subject request for an extension of time in which to file reply comments is granted.

5. The date for filing reply comments is extended to and including October 4, 1984.

6. This action is taken pursuant to section 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.293 of the Commissions Rules.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-26452 Filed 10-4-84; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Review for Eight Species of Foreign Turtles

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

**SUMMARY:** Notice is hereby given that the U.S. Fish and Wildlife Service has evidence on hand to warrant a review of the status of eight species of foreign turtles to determine whether they should be proposed for listing as endangered or threatened species under provisions of the Endangered Species Act of 1973, as amended. The common and scientific names and ranges are provided in the table below. The threats that are believed to be causing declines in these species include habitat alteration, collection of eggs and/or adults for food, and collection for the pet trade. Some are known from very few specimens and are confined to limited geographic ranges. The Service seeks additional information on these turtles, including possible threats to them and their habitats.

**DATES:** Comments and materials relating to the status of these species should be submitted by January 3, 1985.

**ADDRESSES:** Interested persons or organizations are requested to submit comments to the Associate Director—Federal Assistance (OES), U.S. Fish and Wildlife Service, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

## SUPPLEMENTARY INFORMATION:

## Background

Common name	Scientific name	Range
Batagur, painted.....	<i>Callagur borneoensis</i> .	Indonesia, Malaysia, Thailand, Indonesia.
Tortoise, Celebes.....	<i>Geochelone forsteri</i> , <i>Phrynops hogei</i> .....	Brazil.
Turtle, Brazilian sideneck.	<i>Pseudemys felis</i> .....	Bahamas.
Turtle, Cat Island	<i>Platemys pallidipectoris</i> .	Argentina, Bolivia, Paraguay, Bahamas.
Turtle, Chaco sideneck.	<i>Pseudemys malonei</i> .	India.
Turtle, Inagua Island.	<i>Heosemys silvatica</i> .	Colombia, Venezuela.
Turtle, Kavalai forest or cane.	<i>Pseudemys scripta callirostris</i> .	
Turtle, South American red-lined.		

A brief description of these species and their problems is as follows:

*Painted Batagur*

The painted batagur is a large estuarine turtle which inhabits coastal regions in southern Thailand, West Malaysia, and the islands of Borneo and Sumatra. According to Groombridge (1982), the turtle is very rare in Thailand, with the status unknown in Borneo and Sumatra; in West Malaysia, the species is "widespread but generally depleted and heavily exploited." While adults are not regularly exploited, the chief threat to the species comes from the taking of its eggs for food; in some areas, licensed egg collectors take nearly every egg deposited. The species has a low reproductive potential and stereotyped nesting habits which make *Callagur* susceptible to such depredation. For additional references, see Groombridge (1982), Moll (1976), and Siow and Moll (1982).

*Celebes Tortoise*

This species appears to be very rare and localized in distribution and restricted to Celebes. Biologists have spent considerable amounts of time in the area without seeing any specimens, and very few local residents appear to be familiar with the tortoise. According to Groombridge (1982), the only recent sighting is of four specimens in central Celebes in and near the Morowali Reserve. Some biologists believe that *G. forsteri* may be based on released *G. travancorica* and thus not a valid species, but this remains to be clarified.

*Brazilian Sideneck Turtle*

This apparently rare turtle was described on the basis of a single specimen whose place of collection was of questionable validity. Based on 14 additional specimens, Rhodin *et al.* (1982) believe the species to be confined to low-lying areas in the Rio Paraiba drainage, Rio de Janeiro state and southern Minas Gerais, and the Rio Itapemirim, Brazil. The range of this turtle is quite restricted, and the turtle appears very rare. According to Mittermeier *et al.* (1980), the Rio Paraiba is experiencing pollution and siltation, and some of the tributaries have dried up.

*Cat Island Turtle*

This freshwater turtle is confined to small (2.5 km<sup>2</sup>) Cat Island in the Bahamas. It has been considered to be a rare species (Ross, 1982; Groombridge, 1982), although studies by other biologists indicate the population may be larger than originally believed.

Reproduction is believed to depend on adequate rainfall.

Threats to the species include exploitation for food, collection as pets, and habitat destruction due to the potential for development.

*Chaco sideneck turtle*

Little is known about this rare turtle whose range is centered in the Argentinian and Paraguayan Chaco; less than 10 specimens are known (Groombridge, 1982), although some have appeared in the pet trade. According to Groombridge (1982), "the apparent extreme rarity of the species coupled with current pet market pressures may represent a threat."

*Inagua Island Turtle*

This species is known only from Great Inagua Island and on New Providence Island, where it is introduced. The best estimate of population size is about 200-500 individuals (In Groombridge, 1982). This species may be affected in terms of reproductive success by the natural mortality associated with inadequate rainfall, and occasionally by take for pets or predation from feral animals.

*Kavalai Forest or Cane Turtle*

Until relatively recently (Groombridge, 1982) only two specimens of this turtle were known. It was rediscovered by Vijaya (1982) and subsequent searches have revealed an apparent small viable population (Vijaya, 1983; Groombridge *et al.*, 1983). The species is used as food, at least occasionally, by local people, and is threatened by possible modification of its rain forest habitat. This species is confined to the hill rain forest in southwest India.

*South American Red-Lined Turtle*

This medium sized fresh water turtle is confined to the lower Magdalena and Sinu drainages of northern Colombia and northwest Venezuela. Populations, once abundant, are now considered depleted throughout its range, with some local extinction, although the status in Venezuela is uncertain. According to Groombridge (1982), the turtle and its eggs are heavily used for food, hatchlings are gathered in large numbers for the tourist trade to be made into trinkets, and habitat may be locally lost or destroyed by fire. Mass exploitation of the turtles may now have ceased, but large numbers are still reported available in Europe.

Because of the information outlined above, the U.S. Fish and Wildlife Service believes that there are sufficient data to conduct a review of the status of

these foreign turtles to determine whether protection under provisions of the Endangered Species Act of 1973, as amended, may be warranted. The Service is therefore soliciting any additional information, reports, or published literature which may aid in this decision.

#### Literature Cited

- Groombridge, B. 1982. The IUCN Amphibia-Reptilia Red Data Book. Part 1. Testudines, Crocodylia, Rhynchocephalia. IUCN, Gland, Switzerland. 426 pp.
- Groombridge, B., E.O. Moll, and J. Vijaya. 1983. Rediscovery of a rare Indian turtle. *Oryx* 17(3):130-134.
- Mittermeier, R.A., A.G.J. Rhodin, R. da Rocha e Silva, and N. Araujo de Oliveira. 1980. Rare Brazilian sideneck turtle. *Oryx* 15(5):473-475.
- Moll, E.O. 1976. West Malaysian turtles: utilization and conservation. *Herpetol. Rev.* 7(4): 163-166.
- Rhodin, A.G.J., R.A. Mittermeier, and R. da Rocha e Silva. 1982. Distribution and taxonomic status of *Phrynops hogei*, a rare chelid turtle from southeastern Brazil. *Copeia* 1982(1):179-181.
- Ross J.P. 1982. The Cat Island turtle. *Oryx* 16(4): 349-351.
- Siow Kuan Tow and E.O. Moll. 1982. Status and conservation of estuarine and sea turtles in west Malaysia waters. Pp. 339-347. In: K.A. Bjorndal (ed.), *Biology and Conservation of Sea Turtles*, Smithsonian Institution Press, Washington, D.C.
- Vijaya, J. 1982. Rediscovery of the forest cane turtle (*Heosemys silvatica*) of Kerala. *Hamadryad* 7(3):2-3.
- Vijaya, J. 1983. Second search for cane turtles *Heosemys silvatica* in Kerala. *Hamadryad* 8(1):20.

#### Author

This notice of review was prepared by Dr. C. Kenneth Dodd, Jr., Office of Endangered Species (703/235-1975).

#### Authority

The authority for this action is the Endangered Species Act (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, 98 Stat. 1411).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 21, 1984.

**J. Craig Potter,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 84-26445 Filed 10-4-84; 8:45 am]

**BILLING CODE 4310-55-M**

# Notices

Federal Register

Vol. 49, No. 195

Friday, October 5, 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.

## CIVIL AERONAUTICS BOARD

[Docket 42262]

### Westates Airlines Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on October 12, 1984, at 10:00 a.m. (local time) in Room 1027, 1825 Connecticut Ave., NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., October 2, 1984.

Ronnie A. Yoder,  
*Administrative Law Judge.*

[FR Doc. 84-26536 Filed 10-4-84; 8:45 am]

BILLING CODE 6320-01-M

## DEPARTMENT OF COMMERCE

### President's Commission on Industrial Competitiveness; Meetings

**AGENCY:** Office of Economic Affairs, Commerce.

**ACTION:** Notice of meetings.

**SUMMARY:** This notice announces the forthcoming meetings of the President's Commission on Industrial Competitiveness (Commission). The Commission was established by Executive Order 12428 on June 28, 1983 and its charter was approved on August 23, 1983. The Commission shall review means of increasing the long-term competitiveness of United States industries at home and abroad, with particular emphasis on high technology, and provide appropriate advice to the President through the Cabinet Council on Commerce and Trade and the Department of Commerce.

Time and place: On October 23, 1984, from 8:30-12:00 the four subcommittees of the Commission (Research, Development and Manufacturing, International Trade and Marketing,

Human Resources and Capital Resources) will meet in the second floor meeting rooms of the Westin Galleria Hotel, 13340 North Dallas Parkway, Dallas, Texas, to review respective inputs to the final Commission report.

On October 23, 1984, from 1:00-4:30 the full Commission will meet in the Preston II Room, on the third floor of the Westin Galleria Hotel (at the above address) to discuss recommendations forwarded by the subcommittees and the final report.

On October 24, 1984, from 8:30-4:00 a continuation of the full Commission meeting will take place in the Preston II Room, on the third floor of the Westin Galleria Hotel at the above address.

**Public participation:** The meetings will be open to public attendance. A limited number of seats will be available for the public on a first-come, first-served basis.

**FOR FURTHER INFORMATION CONTACT:** J. Paul Royston, President's Commission on Industrial Competitiveness, 736 Jackson Place, NW., Washington, DC 20503, telephone: 202-395-4527.

Dated: October 2, 1984.

Egils Milbergs,

*Executive Director, President's Commission on Industrial Competitiveness.*

[FR Doc. 84-26489 Filed 10-4-84; 8:45 am]

BILLING CODE 3510-18-M

## Bureau of the Census

### Service Annual Survey; Notice of Consideration

The Bureau of the Census hereby gives notice that we plan to conduct the Service Annual Survey in 1985. This survey conducted under Title 13, United States Code, sections 182, 224, and 225 asks for data on operating receipts for 1984 (and 1983 for newly included areas) for selected service industries. This survey is the only continuing source available on a timely basis for developing estimates of service operating receipts. Such as survey, if conducted, shall begin not earlier than December 31, 1984.

The Bureau has received information and recommendations that show the data will have significant application to the information needs of the public, the firms operating in these service industries, and governmental agencies, and that the data are not publicly

available from nongovernmental sources.

The Bureau needs reports only from a selected minimum level sample of service firms in the United States, with probability of selection based on receipts size. The sample will provide, with measurable reliability, statistics on the subject specified above.

You may request copies of the proposed forms and a description of the collection methods through the Director, Bureau of the Census, Washington, D.C. 20233.

Any suggestions or recommendations concerning the content of the proposed survey will receive consideration if submitted in writing to the Director, Bureau of the Census, on or before December 3, 1984.

Dated: October 1, 1984.

John R. Keane,

*Director, Bureau of the Census.*

[FR Doc. 84-26488 Filed 10-4-84; 8:45 am]

BILLING CODE 3510-07-M

## Census Advisory Committee on Agriculture Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice that the Census Advisory Committee on Agriculture Statistics will convene on October 31, 1984, at 9 a.m. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

This Committee advises the Director, Bureau of the Census, concerning the kind of information that should be obtained from respondents associated with agricultural production; prepares recommendations regarding the contents of agricultural reports; and presents the views and needs for data of major agricultural organizations and their members, and other suppliers of agricultural statistics.

The Committee is composed of 20 members appointed by the presidents of the nonprofit organizations having representatives on the Committee, and a representative from the U.S. Department of Agriculture.

The agenda for the meeting, which is scheduled to adjourn at 4 p.m. is: (1) Introductory remarks by the Director, Bureau of the Census; (2) current Census Bureau activities and legislative situation; (3) 1982 Census of Agriculture

data on diskettes—format and use, and priority for final data; (4) 1982 Census of Agriculture coverage; (5) update on United States Department of Agriculture/Census Bureau information sharing; (6) 1987 Standard Industrial Codes revisions; (7) 1987 Census of Agriculture discussion, including (a) review of the current program, (b) content issues, and (c) changing needs for tabulated data; (8) Committee recommendations; and (9) election of chairperson-elect.

The meeting will be open to the public, and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days before the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Mr. George Pierce, Agriculture Division, Bureau of the Census, Room 3009, Federal Building 4, Suitland, Maryland. (Mail address: Washington, D.C. 20233.) Telephone (301) 763-7731.

Dated: October 1, 1984.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 84-26487 Filed 10-4-84; 8:45 am]

BILLING CODE 3510-07-M

## International Trade Administration

### Applications for Duty-Free Entry of Scientific Instruments; Yale University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-256. Applicant: Yale University School of Medicine, 333 Cedar Street, P.O. Box 3333, New Haven, CT 06510. Instrument: Electron Microscope, Model EM 410LS with Accessories. Manufacturer: Philips

Electronic Instruments, The Netherlands. Intended use: Research in the field of cell biology and experimental pathology and medicine involving the study of cells, tissues and subcellular components. The instrument will be used to visualize the fine structural organization of normal cells and tissues as well as those subjected to experimental manipulations. Basic research experiments on the organization of kidney, liver, pituitary cells and cells in culture to determine the localization of proteins in order to understand cellular regulatory processes. The instrument will also be used in training graduate students and postdoctoral trainees in electron microscopy. Application Received by Commissioner of Customs: September 7, 1984.

Docket No. 84-284. Applicant: Augustana Hospital and Health Care Center, 2035 N. Lincoln Avenue, Chicago, IL 60614. Instrument: Kinetic Polarization Fluorometer with Spare Parts. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use: Investigation of lymphocyte fluorescence polarization. The difference in lymphocyte sub-population response to common mitogens will be studied by measuring the fluorescence polarization of fluorescent probes associated with these lymphocytes. The objectives of these experiments are to: (a) Develop a diagnostic test for early cancer detection and (b) verify in a clinical sense the quality of such a diagnostic test. Application Received by Commissioner of Customs: August 27, 1984.

Docket No. 84-287. Applicant: University of California, Los Angeles, Jules Stein Eye Institute, 800 Westwood Plaza, Room B-168, Los Angeles, CA 90024. Instrument: Photo-Rotating Slit Lamp System, Model SL-45. Manufacturer: TOPCON Deutschland GmbH, West Germany. Intended use: Study of human cataract and the progression of this disease in man. The objectives of these studies are to understand the causes and mechanisms which produce cataract in man, and to devise methods and drugs which can prevent or delay the onset of cataracts. Application Received by Commissioner of Customs: August 27, 1984.

Docket No. 84-289. Applicant: Center for Ulcer Research & Education Foundation, VA/Wadsworth, Building 115, Room 203, Los Angeles, CA 90073. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Studies of normal, experimental and diseased gastrointestinal tissues from animal and man. These studies will

be conducted to provide an ultrastructural analysis of (1) those mucosal cells which are involved in the regulation and generation of acid, and (2) extrinsic (vagal) and intrinsic (enteric) nerves which control gastric motility and secretion. Application Received by Commissioner of Customs: August 27, 1984.

Docket No. 84-291. Applicant: Harvard University, Purchasing Department, 1350 Massachusetts Avenue, Cambridge, MA 02138. Instrument: Optical Microscope, Model Laborlux 12 POL. Manufacturer: Leitz, West Germany. Intended use: Studies of diamonds in various states of strain to determine the fundamental properties such as phonon spectra and relate this to the stresses in the diamond. Further studies will be conducted to understand how to design and select diamonds which can be used as anvils in high pressure devices. Students in Physics 383, 384 Low Temperature Physics of Quantum Fluids and Solids will use the instrument for research in physics at low temperature and high pressure. Application Received by Commissioner of Customs: August 27, 1984.

Docket No. 84-292. Applicant: University of Rochester, Strong Memorial Hospital, 601 Elmwood Avenue, Rochester, NY 14642. Instrument: Blood Irradiator Cesium-137 Source, Model Gammacell-1000 and Sample Container. Manufacturer: Atomic Energy of Canada, Ltd., Canada. Intended use: Research purposes: Irradiation of blood for blood bank use. Irradiation of homografts. Radiation survival of dividing cell studies. Cell preparation for mixed leukocyte reaction. Testing of blood-cell leukocyte activity. Application Received by Commissioner of Customs: August 27, 1984.

Docket No. 84-293. Applicant: Regents of the University of California, Material Management Department, Riverside, CA 92521. Instrument: Electromagnetic Soil Conduct Meter, Model EM 38. Manufacturer: Geonics Limited, Canada. Intended use: The instrument will be used to measure the soil salinity in irrigated fields. The objective is to relate this to the variability of irrigation water infiltration into soil and water uptake by plants to determine the most cost effective size of on-farm drainage water evaporation ponds. Educational purposes—Training of extension farm advisors on the alternative methods, including the electromagnetic meter, to determine soil salinity. Application Received by Commissioner of Customs: August 27, 1984.

Docket No. 84-294. Applicant: University of Maryland School of Medicine, 660 West Redwood Street, Baltimore, MD 21201. Instrument: Time-resolved Spectrofluorometer System, Model 199S and Accessories. Manufacture: Edinburgh Instruments, Ltd., United Kingdom. Intended use: Studies of fluorescent organic substances, biological macromolecules, proteins, membranes, and chemicals. Experiments will consist of analysis of membrane-bound proteins, effects of red-edge excitation of fluorescence and anisotropy decays, calmodulin, hemoglobin, ATPase. Application Received by Commissioner of Customs: August 27, 1984.

Docket No. 84-296. Applicant: Whitehead Institute for Biomedical Research, Nine Cambridge Center, Cambridge, MA 02142. Instrument: Electron Microscope, Model EM 410LS with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: Research in the areas of growth and development of biological tissues. Application Received by Commissioner of Customs: September 12, 1984.

Docket No. 84-297. Applicant: U.S. Department of Energy, EG&G Idaho, Inc., P.O. Box 1625, Idaho Falls, ID 83415. Instrument: Electron Microscope, Model EM 420. Manufacturer: N.V. Philips, The Netherlands. Intended use: Investigation of the microstructural features of metals, ceramics and polymers. Application Received by Commissioner of Customs: September 12, 1984.

Docket No. 84-310. Applicant: University of Virginia, Chemistry Department, McCormick Road, Charlottesville, VA 22901. Instrument: Nanosecond Fluorometer System, Model 510B. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use: Study of the luminescent probes that are chemically or ionically attached or adsorbed by a variety of organized and condensed media. They include cyclodextrins, micelles and bilayers. The properties studied will be lifetimes, quantum yields, binding interactions, and quenching phenomena. These results will be used to design model solar energy conversion schemes. The instrument will also be used to teach students modern methods of photochemistry and to apply these techniques to problems related to solar energy conversion and basic inorganic chemistry. Application Received by Commissioner of Customs: September 13, 1984.

Docket No. 84-312. Applicant: Medical College of Ohio at Toledo, Department of Pathology, 3000 Arlington Avenue, Toledo, OH 43699. Instrument: Electron Microscope, Model EM 410LS with

Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: Investigation of a variety of materials including mouse lung tumors, rat kidney, newt liver and tail tissue, animal and human cell cultures, and various diseased human tissues. Most of the experiments will involve morphologic evaluation of tissues, although immunocytochemistry investigation for cell makers is also to be done. The instrument will also be used for training pathology residents and graduate students in the course Diagnostic Electron Microscopy. Application Received by Commissioner of Customs: September 13, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-26437 Filed 10-4-84; 8:45 am]

BILLING CODE 3510-DS-M

#### [C-533-055]

#### Oleoresins From India; Final Results of Administrative Review of Countervailing Duty Order

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of Final Results of Administrative Review of Countervailing Duty Order.

**SUMMARY:** On August 14, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on oleoresins from India. The review covers the period January 1, 1983, through December 31, 1983.

We gave interested parties and opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results.

**EFFECTIVE DATE:** October 5, 1984.

**FOR FURTHER INFORMATION CONTACT:** Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 14, 1984, the Department of Commerce ("the Department") published in the *Federal Register* (49 FR 32430) the preliminary results of its administrative review of the countervailing duty order on oleoresins from India (44 FR 21009, April 9, 1979).

The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

#### Scope of the Review

Imports covered by the review are shipments of Indian oleoresins, which are determined by the Customs Service to be ineligible for duty-free treatment under GSP. Oleoresins are flavoring extracts, fruit flavors, essences, esters, and oils not containing alcohol, and not in ampules, capsules, tablets, or similar forms. Such merchandise is currently classifiable under items 450.2010, 450.2015, 450.2025, and 450.2040 of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1983, through December 31, 1983, and the following programs:

(1) A rebate upon export of indirect taxes under the Cash Compensatory Support Program; (2) a pre-shipment export loans program; (3) income tax deductions through the Export Markets Development Allowance; and (4) grants under the Market Development Assistance program.

#### Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of our review are the same as the preliminary results.

On December 30, 1982, the International Trade Commission ("ITC") notified the Department that the Indian government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979. Should the ITC find that there is material injury or likelihood of material injury to an industry in the United States, the Department will instruct the Customs Service to assess countervailing duties, in the amount of the estimated duties required to be deposited, on all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 30, 1982, and through the date of the ITC's notification to the Department of its determination.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided for by section 751(a)(1) of the Tariff Act, of 2.85 percent of the entered value on any shipments of non-GSP Indian oleoresins entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until

publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: September 28, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-26500 Filed 10-4-84; 8:45 am]

BILLING CODE 3510-DS-M

### National Oceanic and Atmospheric Administration

#### Mid-Atlantic and South Atlantic Fishery Management Councils; Public Meetings

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

**ACTION:** The Mid-Atlantic and South Atlantic Fishery Management Councils will convene joint public meetings on October 24-26, 1984, to discuss the Surf Clam and Ocean Quahog Fishery Management Plan (FMP), Striped Bass and Swordfish FMPs; joint venture policy and other fishery management and administrative matters. The joint Council meetings will take place at the Cavalier, 42nd and Atlantic Avenue, Virginia Beach, VA; telephone: 804-525-8555. A detailed agenda will be available to the public around October 12, 1984. The Mid-Atlantic Council may also convene a closed session to discuss employment and/or national security matters.

In addition, the Scientific and Statistical Committee of the Mid-Atlantic Fishery Management Council will convene a public meeting on October 10, 1984, at the Best Western Airport Inn, Philadelphia International Airport, Philadelphia, PA, to discuss surf clam and ocean quahog quotas for 1985; vessel ID project; the Striped Bass FMP and other fishery-related matters.

These meetings may be lengthened or shortened depending upon progress on agenda items.

For further information contact the Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: 302-674-

2331, or the Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC; telephone: 803-571-4366.

Dated: October 1, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-26469 Filed 10-4-84; 8:45 am]

BILLING CODE 3510-22-M

#### New England Fishery Management Council; Public Meeting

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

The New England Fishery Management Council will convene a public meeting to discuss measures to be included in the fishery management plan for the multi-species fishery in the New England and Mid-Atlantic areas of the fishery conservation zone. Other Council business may be discussed also as time permits. The public meeting will convene on October 10, 1984, at approximately 9:30 a.m., will adjourn at approximately 6 p.m., or upon conclusion of the agenda, and will take place at the Holiday Inn, Peabody, MA. For further information on seating arrangements, changes to the agenda, and/or written comments, contact the Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA 01906; telephone: (617)-231-0422.

Dated: October 1, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84-26470 Filed 10-4-84; 8:45 am]

BILLING CODE 3510-22-M

#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

##### Extending Coverage of Export Visa Requirement To Include Certain Non-Apparel Textiles and Textile Products of Cotton, Wool and Man-Made Fibers Produced or Manufactured in Indonesia

October 2, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 15, 1984. For further information contact James Nader, International Trade Specialist (202) 377-4212.

#### Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 21, 1981, as amended, the Governments of the United States and the Republic of Indonesia have agreed to amend the existing export visa requirement to include non-apparel products in Categories 300-329 and 360-369, 400-429 and 464-469 and 600-627 and 665-669. This coverage is in addition to the coverage of cotton, wool and man-made fiber apparel products in Categories 330-359, 432-459, and 630-659, described in the notice published in the *Federal Register* on February 6, 1980 (45 FR 8084). The visa stamp is not being changed and the officials of the Government of the Republic of Indonesia who are authorized to issue visas also remain unchanged at this time.

The expanded coverage will be effective for non-apparel products of cotton, wool and man-made fibers, produced or manufactured in Indonesia and exported on and after November 15, 1984. Non-apparel merchandise exported before November 15, 1984 will not be denied entry for lack of a visa until February 15, 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 2, 1984.

#### Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the letter of February 1, 1980 concerning cotton, wool and man-made fiber apparel products in Categories 330-359, 431-459 and 630-659, produced or manufactured in the Republic of Indonesia.

Effective on November 15, 1984, the directive of February 1, 1980 is hereby further amended to require that cotton, wool and man-made fiber textiles and textile products in Categories 300-329 and 360-369, 400-429 and 464-469, and 600-627 and 665-669, produced or manufactured in Indonesia and exported to the United States on and after November 15, 1984 must be visaed in order to be entered into the United States for consumption, or withdrawn from warehouse

for consumption. Merchandise in these categories which has been exported before November 15, 1984 shall not be denied entry for lack of a visa until February 15, 1985. The visa stamp and officials authorized by the Government of the Republic of Indonesia to issue visas are not being changed at this time.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

The action taken with respect to the Government of the Republic of Indonesia and with respect to imports of cotton, wool and man-made fiber textiles and textile products from Indonesia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 84-26436 Filed 10-4-84; 9:45 am]

BILLING CODE 3510-OR-M

### Adjusting the Import Limits for Man-Made Fiber Textile Products From the People's Republic of China

October 2, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 9, 1984. For further information contact Jane Corwin, International Trade Specialist (202)377-4212.

#### Background

A CITA directive establishing import limits for specified categories of cotton and man-made fiber textile products, including Category 635 and 640, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1984, was published in the *Federal Register* on December 22, 1983 (48 FR 56626). Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, the Government of the People's Republic of China has notified the Government of the United States of its intention to use flexibility in the form of swing to be applied to the current-

year limits for these categories. The limit for Category 640 is being reduced accordingly to account for swing being applied to Category 635.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622) and July 16, 1984 (49 FR 28754).

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

October 2, 1984.

#### Committee for the Implementation of Textile Agreements

Commissioner of Customs,  
*Department of the Treasury, Washington, D.C.*

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 19, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain specified categories of cotton and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1984.

Effective on October 9, 1984, the directive of December 19, 1983 is hereby further amended to adjust the previously established levels of restraint for Categories 635 and 640 to the following under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983:<sup>1</sup>

Category	Adjusted 12-mo. level of restraint <sup>1</sup>
635.....	404,223 doz.
640.....	1,046,407 doz.

<sup>1</sup> The levels have not been adjusted to reflect any imports exported after December 31, 1983.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 84-26501 Filed 10-4-84; 8:45 am]

BILLING CODE 3510-DR-M

<sup>1</sup> The Agreement provides, in part, that (1) with the exception of Category 315, and specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

### Adjusting Import Limits for Certain Apparel Products From the Republic of the Philippines

October 2, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 9, 1984. For further information contact Carl Ruths, International Trade Specialist (202) 377-4212.

#### Background

A CITA directive dated December 16, 1983 (48 FR 56425), as amended, established limits for certain categories of cotton, wool and man-made fiber textile products, including Categories 333/334, 335T, 336T, 337, 338/339, 340, 341, 347, 433, 443, 631pt., (work gloves in TSUSA numbers 704.3215, 704.8525, and 704.9000), 636NT, 652NT and 659T, produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1984. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982 between the Governments of the United States and the Republic of the Philippines, the 1984 limits for Categories 333/334, 335T, 338/339, 340, 341T, 341NT, 347, 433, 443, 631pt., 636NT and 652NT are being increased by the application of carryover, carryforward and swing. As consequence of the swing adjustments, the limits for Categories 336T, 337T, 337NT and 659T are being reduced. Carryforward, to the extent used in 1984, will be deducted from the 1985 limits of the affected categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

October 2, 1984.

#### Committee for the Implementation of Textile Agreements

Commissioner of Customs,  
*Department of the Treasury, Washington, D.C.*

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 16, 1983 from the Chairman of the Committee for the

Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during 1984.<sup>1</sup>

Effective on October 9, 1984, paragraph 1 of the directive December 16, 1983 is hereby further amended to include adjusted restraint limits for the following categories:

Category	Adjusted 12-mo. restraint limit <sup>2</sup>
333/334	91,263 dozen.
335T	44,814 dozen.
336T	377,077 dozen.
337T	336,164 dozen.
337NT	29,155 dozen.
338/339	999,906 dozen.
340	291,718 dozen.
341T	80,404 dozen.
341NT	111,572 dozen.
347	303,643 dozen.
433	3,693 dozen.
443	2,486 dozen.
631pt. <sup>3</sup>	448,090 dozen pairs.
636NT	50,242 dozen.
652NT	708,537 dozen.
659T	3,719,406 dozen.

<sup>1</sup> The limits have not been adjusted to reflect any imports exported after December 31, 1983.

<sup>2</sup> In Category 631 only TSUSA numbers 704.3215, 704.8525, and 704.9000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald L. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 84-26499 Filed 10-4-84; 8:45 am]

BILLING CODE 3510-DR-M

## CONSUMER PRODUCT SAFETY COMMISSION

### Manufacturers of Chain Saws and Saw Chain; Meeting

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commission has scheduled a public meeting with manufacturers of chain saws and saw chain to discuss methods for marketing, advertising and promoting the safety features that will be used to meet the requirements of the draft revised American National Standards Institute (ANSI) B 175 "Standard for Chain Saws."

**DATES:** (1) The meeting will begin at 10:00 a.m. on October 16, 1984 (2)

<sup>1</sup> The agreement, provides in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

requests from chain saw and saw chain manufacturers to participate, and copies of their presentations, should be received by the Office of the Secretary no later than October 9, 1984.

**ADDRESSES:** The meeting will be held in the third floor conference room at 1111 18th Street, NW., Washington, D.C.

Requests from manufacturers to participate, and copies of their presentations, should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6800. For further information contact: Carl Blechschmidt, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6554.

**SUPPLEMENTARY INFORMATION:** For some time, the Commission has been working with industry for the adoption of an amendment to the ANSI Standard to address the hazard of chain saw kickback. This work has culminated in a draft standard which will soon be sent out for final comment.

One major requirement of the standard is that chain saws must have at least two separate features to reduce the hazard of kickback, such as a bar tip guard, reduced kickback saw chain, reduced kickback guide bar, chain brake, etc. The Commission is interested in receiving information and views from chain saw and saw chain manufacturers pertaining to the advertisement, promotion and marketing of those features. Therefore, the Commission has scheduled a meeting with the manufacturers of saw chain and chain saws for 10:00 a.m. October 16, 1984, in the third floor conference room at 1111 18th Street, NW., Washington, D.C.

The purpose of the meeting is to gain information concerning how these separate features may be promoted, marketed, advertised, and labeled. The Commission is also interested in obtaining information on how these features can be identified by a consumer and how they may be advertised by dealers.

The Commission is contacting chain saw and saw chain manufacturing firms known to be manufacturing these products concerning the meeting. Representatives of these firms who want to participate should call or write Sadye E. Dunn, Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6800, no later than October 9, 1984. Copies of the participants presentations should be provided to the Secretary by that date. It may be necessary for the Commission to impose time limitations on the

presentations of the participants or to limit duplicative or irrelevant comments. The meeting will consist of presentations by the participants, followed by questions by the Commissioners.

Dated: October 2, 1984.

**Sheldon D. Butts,**

*Deputy Secretary, Consumer Product Safety Commission.*

[FR Doc. 84-26537 Filed 10-4-84; 8:45 am]

BILLING CODE 6355-01-M

## COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 84-1]

### 1983 Cable Royalty Distribution

**AGENCY:** Copyright Royalty Tribunal.

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:**

Edward W. Ray, Acting Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Room 450, Washington, D.C. 20036, (202) 653-5175.

**SUMMARY:** In accordance with 17 U.S.C. 111(d)(5)(B), the Copyright Royalty Tribunal (Tribunal) directs that claimants to royalty fees paid by cable operators for secondary transmissions during 1983 shall submit not later than November 15, 1984 any comments concerning whether a controversy exists with regard to the distribution of the 1983 royalty fees. Claimants shall, at the same time, advise the Tribunal of their views concerning hearing schedules and procedures if the Tribunal determines that a controversy exists.

Dated: October 1, 1984.

**Edward W. Ray,**

*Acting Chairman.*

[FR Doc. 84-28495 Filed 10-4-84; 8:45 am]

BILLING CODE 1410-09-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP84-703-000]

### Texas Eastern Transmission Corp.; Application

September 26, 1984.

Take notice that on September 10, 1984, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP84-703-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural

gas in interstate commerce for United States Steel Corporation (USS), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that USS has purchased quantities of natural gas from Carnegie Natural Gas Company (Carnegie) which USS desires to have transported to its Fairless Works Plant located in Bucks County, Pennsylvania, for use as fuel oil displacement gas. Applicant proposes to receive from Carnegie, by displacement, quantities of natural gas of up to 37,200 dt equivalent of gas per day at the existing point of interconnection between Applicant and Carnegie located at Applicant's meter station 1275 in Greene County, Pennsylvania, or at other mutually agreeable points of receipt from Carnegie, and to transport and redeliver equal quantities to Philadelphia Electric Company (Philadelphia), for the account of USS, at existing points of interconnection between Applicant and Philadelphia designated as Applicant's M&R Station 035 located in Delaware County, Pennsylvania, Applicant's M&R Station 036 located in Montgomery County, Pennsylvania, or at other mutually agreeable points of delivery to Philadelphia. Applicant indicates that Philadelphia would in turn transport, on behalf of USS, and redeliver such quantities of natural gas to USS at USS's Fairless Works Plant located in Bucks County, Pennsylvania.

Applicant proposes to transport the stated quantities of natural gas under its currently effective Rate Schedule TS-2, FERC Gas Tariff, Fourth Revised Volume No. 1. Applicant indicates that on July 14, 1983, the Commission issued its Order Approving Settlement in *Texas Eastern Transmission Corporation*, Docket Nos. RP83-35-000, et al., 24 FERC ¶ 61,065, in which it approved transportation of natural gas for fuel oil displacement under Applicant's Rate Schedule TS-2. Applicant proposes to charge USS its currently effective TS-2 (Fuel Oil Displacement) transportation rate of 16.76 cents per dt transported for USS and to reduce volumes received for transportation for shrinkage by 4 percent for the period November 16 through April 15 of each year and by 3 percent for the period April 16 through November 15 of each year.

Applicant requests a limited-term certificate with pregranted abandonment authorization expiring February 13, 1985.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 16, 1984, file with the Federal Energy Regulatory Commission, Washington,

D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**  
Secretary.

[FR Doc. 84-26429 Filed 10-4-84; 8:45 am]  
BILLING CODE 6717-01-M

#### [Project No. 3178-002]

#### **Public Utility District No. 1 of Mason County, Wash.; Intent To Prepare Environmental Impact Statement and Notice of Scoping Session and Public Meeting**

September 28, 1984.

The Public Utility District of Mason County, Washington (PUD) filed on August 9, 1983, an application for license for the Hamma Hamma Project No. 3178-002. The project would be located on the Hamma Hamma River in Mason County, Washington.

Public notice of the application was issued by the Commission on May 21, 1984. The application has been mailed to federal and state agencies for their review and comment. The Commission's staff has determined that issuance of a license for the PUD's proposed

hydroelectric project would constitute a major federal action significantly affecting the quality of the human environment.

The staff therefore intends to prepare an environmental impact statement in accordance with the National Environmental Policy Act. Possible alternatives to the proposed action will be addressed.

#### **Scoping Session**

Interested persons and agencies are invited to participate in the scoping meeting to discuss the environmental impacts expected from the proposed Hamma Hamma Project. The scoping session will be held at 10:00 a.m. on Tuesday, October 16, 1984, in Hearing Room 2866 of the Jackson Federal Building, 915 Second Avenue, Seattle, Washington. The scoping session will be convened by the Commission's staff. The purpose of the scoping session is to enable interested persons and agencies to discuss with the Commission's staff environmental impacts and other matters which should be included in the environmental impact statement.

#### **Public Meeting**

Interested officials and members of the public are invited to express their views about the project at a public meeting. The public meeting will be held at 7:30 p.m. on Monday, October 15, 1984, at the Hoodspout Fire Hall in Hoodspout, Washington. The meeting will be conducted by the Commission's staff. Persons may give their statements at the meeting orally or in writing. Earlier on the same day the Commission's staff will conduct an inspection of the proposed project area.

The public meeting will be recorded by a stenographer, and all statements (oral or written) will become part of the public meeting record. In addition, the public meeting record will remain open until November 16, 1984, and anyone may submit written comments on the project until that time. Comments should be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, and should clearly show the project name (Hamma Hamma) and number (Project No. 3178-002) on the first page.

For further information, please contact Quentin Lawson at (202) 357-8494, or Frank Karwoski at (202) 376-1761.

**Kenneth F. Plumb,**  
Secretary.

[FR Doc. 84-26420 Filed 10-4-84; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP83-151-004]

**Carnegie Natural Gas Co.; Application**

October 2, 1984.

Take notice that on August 27, 1984,<sup>1</sup> Carnegie Natural Gas Company (Applicant), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP83-151-004 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a limited-term sale of natural gas to New Jersey Natural Gas Company (New Jersey Natural) for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell for resale up to 40,000 dt equivalent of natural gas per day on a best-efforts basis to New Jersey Natural for system supply for a period not to exceed one year. Applicant proposes to deliver the gas for the account of New Jersey Natural in Green County, Pennsylvania, at Texas Eastern Transmission Corporation's (Texas Eastern) measuring stations 008 or 1275 or other mutually agreeable existing interconnection. Texas Eastern is said to have agreed to transport the gas for and to New Jersey Natural at a mutually agreeable point.

The proposed sale price of the gas would be equal to that paid to Texas Eastern at 100 percent load factor plus 3 cents per dt.

Applicant states that sales in its Pittsburgh market area have declined and that they are below its take-or-pay obligation to Texas Eastern. Applicant proposes to continue the sale of New Jersey Natural to alleviate this situation. It is stated that the gas proposed to be sold would come exclusively from Applicant's high pressure system which serves only United States Steel Corporation and that a reduction in such deliveries would have no rate or service effect on Applicant's customers served from its low pressure system.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 22, 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

<sup>1</sup> The application was initially tendered for filing on August 27, 1984; however, the fee required by § 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until August 30, 1984; thus, filing was not completed until the latter date.

Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 84-26049 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7204-001]

**Cascade Area Council, Inc.; Surrender of Preliminary Permit**

Take notice that Cascade Area Council, Inc. Permittee for the Neal Creek Project No. 7204, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7204 was issued on October 31, 1983, and would have expired on March 31, 1985. The project would have been located on Neal Creek, near Jordan in Linn County, Oregon.

Cascade Area Council, Inc. filed the request on September 24, 1984, and the surrender of the preliminary permit for Project No. 7204 is deemed accepted as of September 24, 1984, and effective as of 30 days after the date of this notice.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 84-26410 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7606-001]

**Charles Gresham and Rich Gresham; Surrender of Preliminary Permit**

September 28, 1984.

Take notice that Charles and Rich Gresham, Permittees for the Harvey Creek Project No. 7606, have requested that their preliminary permit be terminated. The preliminary permit for Project No. 7606 was issued on January 25, 1984, and would have expired on June 30, 1985. The project would have been located on Harvey Creek, near Metaline Falls, in Pend O'Reille County, Washington. Charles Gresham filed the request on September 17, 1984, and the surrender of the preliminary permit for project No. 7606 is deemed accepted as of September 17, 1984, and effective as of 30 days after the date of this notice.

**Kenneth F. Plumb,**  
*Secretary.*

FR Doc. 84-26411 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP81-163-002]

**Columbia Gas Transmission Corp.; Petition To Amend**

October 2, 1984.

Take notice that on September 20, 1984, Columbia Gas Transmission Corporation (Petitioner), 1700 MacCorkle Avenue, SE, Charleston, West Virginia 25314, filed in Docket No. CP81-163-002 a petition to amend the order issued October 2, 1981, in Docket No. CP81-163-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize an extension of the term of the transportation service authorized therein for an additional three-year period to expire November 20, 1987, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

On January 29, 1981, Petitioner states it filed an application for a certificate of public convenience and necessity authorizing the transportation of natural gas for Union Carbide Corporation (UCC). It is asserted that UCC had excess ethane available and to avert the loss of this excess energy proposed to exchange and equivalent amount of hydrocarbon fuel with Petitioner. Petitioner states that it agreed to receive liquid ethane at its Cobb compressor station in Big Sandy District, Kanawha County, West Virginia, and deliver thermally equivalent quantities of natural gas to Sugar Bowl Pipe Line for UCC's account by a reduction in Petitioner's scheduled receipts of gas at

the outlet of Exxon's Garden City plant in St. Mary Parish, Louisiana. Commission authorization for this transportation was for a term ending November 20, 1984.

Petitioner states that it now seeks authority to continue the transportation of up to 16,200 dt equivalent of gas per day on a best-efforts basis for an additional three-year period. Petitioner states that the amendment includes the provision that for all ethane delivered by UCC to Petitioner, Petitioner would reduce its scheduled receipts at the outlet of Exxon's Garden City plant in St. Mary Parish, Louisiana, and direct that equivalent quantities of natural gas be delivered to Acadian Pipeline, the successor company to Sugar Bowl Pipe Line. Acadian Pipeline would make the ultimate delivery to UCC's plant in Taft, Louisiana, it is explained.

Petitioner proposes a transportation charge of 43.15 cents per dt which would become effective November 1, 1984, pending final disposition of Petitioner's rate filing in Docket No. RP84-75-000. Additionally, Petitioner proposes to retain for company-use and unaccounted-for gas 2.43 percent of the total quantity of gas delivered into its system, also pending final disposition for Docket No. RP84-75-000.

Petitioner also proposes to charge the General R&D Funding Unit of the Gas Research Institute which it states is currently 1.21 cents per dt equivalent and is set forth in Petitioner's Rate Schedule TS-1.

Any persons desiring to be heard or to make any protest with reference to said petition to amend should on or before October 22, 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.

[Docket No. CP61-92-014]

### El Paso Natural Gas Co.; Petition To Amend

October 2, 1984.

Take notice that on September 12, 1984, El Paso Natural Gas Company (Petitioner), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP 61-92-014 a petition to amend the order issued in Docket No. CP61-92-000 on January 11, 1965,<sup>1</sup> as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize the establishment of (1) two new delivery points between Petitioner and Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), (2) a specified area of interest and the exchange of natural gas from such area under the authorized exchange arrangement between Petitioner and Northern, and (3) blanket authorization for the addition and deletion of delivery points from time to time, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by Commission order issued January 11, 1965, as amended, in Docket Nos. CP61-92 and CP61-139, Petitioner and Northern respectively, received permanent certificate authorization to construct and operate certain facilities and deliver natural gas, on an exchange basis, by use of existing capacity in either Petitioner's or Northern's gathering system at certain designated points in Moore, Ochiltree, Hemphill, Hockley, and Yoakum Counties, Texas, and Beaver, Roger Mills and Woodward Counties, Oklahoma, all pursuant to a 1963 services agreement, dated August 17, 1962 between Petitioner and Northern.

Petitioner further states that Northern has advised Petitioner that it has certain quantities of natural gas, which quantities of natural gas have been acquired by Northern under various gas purchase agreements, that Northern desires to make available for delivery to Petitioner under the 1963 services agreement. It is said that in order that Northern may deliver its natural gas volumes available from the Arrington 4-64 and 4-53 wells located in Hemphill County, Texas, to Petitioner under the 1963 services agreement, Petitioner and Northern have entered into an amendatory agreement, dated July 26, 1983, wherein the parties have agreed to revise Exhibit A to the 1963 services agreement to reflect the proposed

additional delivery points. It is said further that natural gas delivered by Northern to Petitioner at the Arrington 4-64 and Arrington 4-53 wells would be commingled with natural gas purchased by Petitioner and delivered into Petitioner's system through existing facilities owned and operated by Petitioner; therefore, no additional facilities are required.

Petitioner states that as set forth in the proposed Sixth Revised Exhibit A to special Rate schedule Z-1, Northern may cause the delivery of up to 1,000 Mcf of natural gas per day to Petitioner at each of the two (2) delivery points, which gas Petitioner would receive and subsequently transport and redeliver to Northern as a part of the total exchange volumes now authorized under special Rate Schedule Z-1.

Petitioner further states that inasmuch as Petitioner and Northern contemplate having available additional gas supplies which would be located in close proximity to the other party's respective existing gathering system, Petitioner and Northern have entered into an amendatory agreement dated January 13, 1984, further amending the 1963 services agreement to establish a specified "area of interest" provision. Therefore, Petitioner requests that the amended authorization requested therein, when issued, specifically permit (i) the exchange of natural gas from additional delivery points which may be attached to the respective gathering system, of each party as the natural gas at such point becomes available to Petitioner and Northern in the area of interest including the Arrington 4-64 and Arrington 4-53 wells located in Hemphill County, Texas, and (ii) the addition of such points of interconnection as may be required between the parties in the area of interest. In addition, Petitioner requests blanket authorization for the deletion of delivery points and points of interconnection from the exchange arrangement as may be mutually agreed to from time to time by Petitioner and Northern. It is said that in the event facilities subject to the jurisdiction of the commission are required to be installed by Petitioner for the purpose of effectuating the exchange of natural gas from additional delivery points or points of interconnection in the specified area of interest, as requested, Petitioner would propose to do so under its existing blanket authorization granted in Docket No. CP82-435-000 by order issued September 8, 1982.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before

<sup>1</sup> This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

Oct. 22, 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. 84-26413 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC84-14-000 et al.]

**Mississippi River Transmission Corp., et al.; Tariff Sheet Filings**

October 1, 1984.

Take notice that the following pipelines<sup>1</sup> have filed revised tariff sheets to become effective November 1, 1984, pursuant to § 281.204(b)(2) of the Commission's Regulations, which section requires interstate pipelines to update their respective index of entitlements annually to reflect changes in priority 2 entitlement (Essential Agricultural Users).

**Pipeline and Docket No.**

- (1) Mississippi River Transmission Corporation, TC84-14-000, Filed: September 14, 1984; Third Revised Sheet No. 75; Second Revised Sheet No. 76; Second Revised Sheet No. 77; Third Revised Sheet No. 78; Second Revised Sheet No. 79 of FERC Gas Tariff, Second Revised Volume No. 1
- (2) K N Energy, Inc. TC84-15-000, Filed: September 14, 1984; Eighth Revised Sheet Nos. 33 through 37; Sixth Revised Sheet Nos. 38 through 49; Third Revised Sheet Nos. 50 through 53; Original Sheet No. 54 of FERC Gas Tariff, Third Revised Volume No. 1.
- (3) Tennessee Gas Pipeline Company, a Division of Tenneco Inc., TC84-16-000, Filed: September 14, 1984; Original Sheet Nos. 43A, 46, 47, 48, 49, 50, 90A, 90B, 90C, and 125A; First Revised Sheet Nos. 20, 35, 44, 51, 52, 113A, 130, 132, and 133; Second Revised Sheet Nos. 17, 26, 45, 70, and 75; Third Revised Sheet Nos. 12, 14, 19, 30, 33, 98 and 135; Fourth Revised Sheet Nos. 104, 126, and 134; Fifth Revised Sheet No. 121; Sixth Revised Sheet Nos. 92 and 93; Eighth

Revised Sheet No. 2 of FERC Gas Tariff, Original Volume No. 1A

- (4) El Paso Natural Gas Company, TC84-18-000, Filed: September 14, 1984; Second Revised Sheet No. 329 of FERC Gas Tariff, First Revised Volume No. 1; Sixteenth Revised Sheet No. 1-M.3 of FERC Gas Tariff, Third Revised Volume No. 2; Sixteenth Revised Sheet No. 7-MM.3 of FERC Gas Tariff, Original Volume No. 2A
- (5) Florida Gas Transmission Company, TC84-19-000, Filed: September 17, 1984; 1st Revised Sheet No. 30; 1st Revised Sheet No. 31; 1st Revised Sheet No. 32; 1st Revised Sheet No. 33; 1st Revised Sheet No. 34; 1st Revised Sheet No. 35; 1st Revised Sheet No. 37 of FERC Gas Tariff, First Revised Volume No. 1
- (6) Arkansas Louisiana Gas Company, TC84-20-000, Filed: September 17, 1984; 6th Revised Sheet No. 3E; 6th Revised Sheet No. 3F; 6th Revised Sheet No. 3G; 6th Revised Sheet No. 3H; 6th Revised Sheet No. 3I; 6th Revised Sheet No. 3J of FERC Gas Tariff, First Revised Volume No. 1
- (7) Eastern Shore Natural Gas Company, TC84-21-000, Filed: September 17, 1984; Sixth Revised Sheet No. 424 of FERC Gas Tariff, Original Volume No. 1
- (8) Colorado Interstate Gas Company, TC84-22-000, Filed: September 17, 1984; Fifth Revised Sheet No. 61H of FERC Gas Tariff, Original Volume No. 1
- (9) North Penn Gas Company, TC84-23-000, Filed: September 18, 1984; Third Revised Sheet No. 12K; Third Revised Sheet No. 12L of FERC Gas Tariff, First Revised Volume No. 1.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 15, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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.*

**Appendix**

- Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124
- K N Energy, Inc., P.O. Box 608, Hastings, Nebraska 68901
- Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Tenneco Building, P.O. Box 2511, Houston, Texas 77001

- El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978
- Florida Gas Transmission Company, Box Number 44, Winter Park, Florida 32790-0044
- Arkansas Louisiana Gas Company, P.O. Box 21734, Shreveport, Louisiana 71151
- Eastern Shore Natural Gas Company, P.O. Box 615, Dover, Delaware 19903-0615
- Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944
- North Penn Gas Company, 76-80 Mill Street, Port Allegany, Pennsylvania 16743.

[FR Doc. 84-26414 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-679-000]

**Public Service Company of New Mexico; Application**

October 1, 1984.

Take notice that on August 31, 1984, Public Service Company of New Mexico (Applicant), Alvarado Square, Albuquerque, New Mexico 87158, filed in Docket No. CP84-679-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition of pipeline transmission and related facilities and the transportation and sale of natural gas through such facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant is stated to be an electric utility operating in New Mexico, selling electricity retail and wholesale, and providing wheeling services to other utilities. Applicant seeks authorization from the Commission to acquire certain interstate natural gas pipeline and related New Mexico facilities of Western Gas Interstate Company (WGI), a wholly owned subsidiary of Southern Union Company (Southern Union), and to continue the transmission and sales operations performed by WGI through such facilities. WGI allegedly owns and operates jurisdictional transmission facilities through and by which it transports and sells natural gas for resale in interstate commerce in Texas, Oklahoma and New Mexico.

Applicant indicates that the proposed acquisition arises out of an April 12, 1984, settlement and agreement of the "New Mexico Natural Gas Antitrust Litigation," MDL No. 403 (N. Mex.), an action wherein numerous plaintiffs, including Applicant, charged that the

<sup>1</sup> Addresses of the pipelines are listed in the Appendix hereto.

natural gas agreements between defendants Southern Union, *et al.*, and producers in the San Juan Basin of New Mexico led to artificially inflated prices. Applicant states that its complaint, filed June 9, 1981, sought similar redress for the alleged conspiracy to fix the price of natural gas at the wellhead for distribution in New Mexico in violation of the Sherman Act, 15 U.S.C. 1, *et seq.* (1982).

Applicant contends that a purchase and sale agreement executed on April 12, 1984, in accordance with the aforementioned settlement agreement, provides that Southern Union sell to Applicant all of its properties and assets relating to the distribution, gathering, transmission, and storage of natural gas in New Mexico, including the tangible properties, plant and equipment of WGI located in New Mexico, in particular, WGI's Antelope Ridge facilities. According to Applicant, it would acquire all rights of WGI with respect to operation of Antelope Ridge. The purchase price of the WGI facilities is said to be the original cost net of accumulated depreciation, less certain operational liabilities. Applicant intends to transfer the acquired interest to a subsidiary to be created by Sunbelt Mining Company, Inc. (Sunbelt). Sunbelt is a wholly owned subsidiary of Applicant engaged in the mining and sale of coal. Applicant asks that any certificate issued by the Commission be issued in the name of the Sunbelt subsidiary.

Applicant states that WGI's Antelope Ridge facilities were previously authorized by the Commission to be constructed and operated pursuant to a certificate, as amended, in *Transwestern Pipeline Company, et al.*, 5 FERC ¶ 61,101 (November 3, 1978) and 9 FERC ¶ 61,332 (December 10, 1979). Applicant also maintains that in Docket No. CP84-623-000 WGI requested permission and approval to abandon these facilities pursuant to Section 7(b) of the Natural Gas Act. Applicant indicates that the Antelope Ridge facilities consist of 2.1 miles of 4-inch pipeline, a 750 horsepower compressor, and appurtenant facilities.

Applicant states that it would operate such acquired facilities in the same manner as authorized in the original certificates, *supra*, and would perform the same transportation and sales services heretofore performed by WGI at Antelope Ridge. The rates, charges, terms and conditions of such service, it says, would be identical to those under existing Rate Schedule G-R to WGI's FERC Gas Tariff. Applicant indicates that WGI currently provides interstate

transmission and sales service through the Antelope Ridge facilities to Gas Company of New Mexico (GCNM). According to Applicant, GCNM would be acquired by Applicant under the settlement and would be operated as one of its divisions. It is represented that the purchase and sale agreement requires Applicant to receive Commission authorization to continue the service currently performed by WGI as a condition precedent to consummation of the acquisition transaction.

Applicant asserts that the settlement and purchase agreements give Applicant the authority to attempt renegotiations of the San Juan Basin gas purchase agreements. These renegotiated contracts, it contends, coupled with transmission and distribution of intrastate as supplies in New Mexico by a company based in New Mexico, would ultimately lead to cheaper gas costs for New Mexico consumers.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 22, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**  
Secretary.

[FR Doc. 84-26415 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-680-000]

**Public Service Company of New Mexico; Application**

October 1, 1984.

Take notice that on August 31, 1984, Public Service Company of New Mexico (Applicant), Alvarado Square, Albuquerque, New Mexico 87158, filed in Docket No. CP84-680-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation and sale of natural gas in interstate commerce and the assignment of contractual rights to natural gas to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities under sections 311 and 312 of the Natural Gas Policy Act of 1978, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that the Application arises out of an April 12, 1984, settlement and agreement of the "New Mexico Natural Gas Antitrust Litigation," MDL No. 403 (N.Mex.), an action wherein numerous plaintiffs, including Applicant, charged the defendants Southern Union Company (Southern Union), among others, conspired to fix the price of natural gas at the wellhead for distribution in New Mexico in violation of the Sherman Act, 15 U.S.C. 1, *et seq.* (1982).

Applicant contends that a purchase and sale agreement executed on April 12, 1984, in accordance with the aforementioned settlement agreement, provides that Southern Union sell to Applicant all of its properties and assets relating to the distribution, gathering, transmission, and storage of natural gas in New Mexico, including the facilities of Gas Company of New Mexico (GCNM), the New Mexico distribution division of Southern Union. According to Applicant, GCNM would be operated as one of its divisions (GCNM-PNM).

Applicant states that GCNM-PNM would be primarily a natural gas distribution company with facilities located entirely within the State of New Mexico. It is indicated that Applicant must receive Commission authorization

to continue the services currently performed by GCNM pursuant to a blanket certificate issued to GCNM in Docket No. CP80-331 (May 8, 1981) as a condition precedent to consummation of the acquisition transaction.

Applicant asserts that in Docket No. G-15186 GCNM was exempt under section 1(c) of the Natural Gas Act. Applicant has accordingly sought similar exemption from the Commission for its prospective GCNM-PNM division by its pending application filed in Docket No. CP84-683-000.

Applicant maintains that, under Commission Order No. 63 (January 3, 1980) and § 284.222 of the Regulations thereunder, Hinshaw companies may participate in arrangements permitted under sections 311 and 312 of the Natural Gas Policy Act for the transportation, sale, and assignment of natural gas by intrastate pipelines. Citing an ability and willingness to perform the acts required by Order No. 63 and the applicable regulations, Applicant seeks the issuance of a blanket certificate for the performance of such services by GCNM-PNM.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 22, 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 these proceedings. Any person wishing to become a party to proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is

required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-26416 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CP84-681-000]**

**Public Service Company of New Mexico; Application**

October 1, 1984.

Take notice that on August 31, 1984, Public Service Company of New Mexico (Applicant), Alvarado Square, Albuquerque, New Mexico 87158, filed in Docket No. CP84-681-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.127 of the Commission's Regulations for prior authorization to transport natural gas under its Order No. 63 blanket certificate<sup>1</sup> all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that pursuant to a purchase and sale agreement, executed on April 12, 1984, in compliance with settlement of the "New Mexico Natural Gas Antitrust Litigation", MDL No. 403 (N. Mex.), Southern Union Company (Southern Union) is to sell to Applicant all of its properties and assets relating to the distribution, gathering, transmission, and storage of natural gas in New Mexico, including the facilities of Gas Company of New Mexico (GCNM), the New Mexico distribution division of Southern Union. According to Applicant, it would succeed to all rights and obligations of GCNM and would operate GCNM as one of its divisions (GCNM-PNM).

Applicant states that GCNM-PNM would be primarily a natural gas distribution company with facilities located entirely within the State of New Mexico. It is indicated that Applicant must receive Commission authorization to continue the services currently performed by GCNM pursuant to a blanket certificate issued to GCNM in Docket No. CP80-331 (May 8, 1981), as a condition precedent to consummation of the acquisition transaction.

Applicant asserts that GCNM is currently exempt under section 1(c) of the Natural Gas Act, Docket No. G-15186 (July 28, 1958), and Applicant has accordingly sought similar exemption

<sup>1</sup> Application for such blanket certificate is pending in Docket No. CP84-680-000.

from the Commission for its prospective GCNM-PNM division by concurrent application filed in Docket No. CP84-683-000. On the same day, Applicant filed an application in Docket No. CP84-680-000 for a blanket certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations to engage in the transportation and sale of natural gas to the same extent as provided by sections 311 and 312 of the Natural Gas Policy Act of 1978 for intrastate pipelines.

Applicant requests prior authorization for GCNM-PNM to engage in a transportation service on behalf of El Paso Natural Gas Company (EPNG), as part of a larger transportation service involving the delivery of gas purchased by Arizona Public Service Company (APSC) from Southern Union Gathering Company (Gathering Company). It is intended that a wholly-owned subsidiary of Applicant would acquire the capital stock of Gathering Company under the terms of the settlement agreement.

Specifically, Applicant seeks authorization to transport, on a self-executing basis, up to 4.2 billion Btu of gas per day through the GCNM-PNM facilities. Applicant notes that the gas would ultimately be delivered to Chemonics, Inc. Arizona Agrochemical Company (Agrochem) for use as feedstock in the manufacture of fertilizer at its Phoenix, Arizona, plant and for other agricultural uses. The services currently performed by GCNM are said to be identical to the services to be performed by GCMM-PNM.

Applicant states that title to the gas would at all times remain with APSC. Admitting that its proposed transportation service may not qualify as a self-executing transaction inasmuch as the gas to be transported is not for its system supply for resale, it submits this application for prior Commission approval.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 22, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to

participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 84-26417 Filed 10-4-84; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP84-682-000]

**Public Service Company of New Mexico; Application**

October 1, 1984.

Take notice that on August 31, 1984, Public Service Company of New Mexico (Applicant), Alvarado Square, Albuquerque, New Mexico 87158, filed in Docket No. CP84-682-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.127 of the Commission's Regulations for prior authorization to transport natural gas under its Order No. 63 blanket certificate,<sup>1</sup> all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that pursuant to a purchase and sale agreement, executed on April 12, 1984, in compliance with settlement of the "New Mexico Natural Gas Antitrust Litigation", MDL No. 403 (N. Mex.), Southern Union Company (Southern Union) is to sell to Applicant all of its properties and assets relating to the distribution, gathering, transmission, and storage of natural gas in New Mexico, including the facilities of Gas Company of New Mexico (GCNM), the New Mexico distribution division of Southern Union. According to Applicant, it would succeed to all rights and obligations of GCNM and would operate GCNM as one of its divisions (GCNM-PNM).

Applicant states that GCNM-PNM would be primarily a natural gas distribution company with facilities located entirely within the State of New Mexico. It is indicated that Applicant must receive Commission authorization to continue the services currently performed by GCNM pursuant to a blanket certificate issued to GCNM in Docket No. CP80-331 (May 8, 1981) as a condition precedent to consummation of the acquisition transaction.

Applicant asserts that GCNM is currently exempt under section 1(c) of the Natural Gas Act, Docket No. G-15186 (July 28, 1958), and Applicant has accordingly sought similar exemption from the Commission for its prospective GCNM-PNM division by concurrent

application filed in Docket No. CP84-683-000. On the same day, Applicant filed an application in Docket No. CP84-680-000 for a blanket certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations to engage in the transportation and sale of natural gas to the same extent as provided by sections 311 and 312 of the Natural Gas Policy Act of 1978 for intrastate pipelines.

Applicant requests prior authorization for GCNM-PNM to engage in a transportation service on behalf of El Paso Natural Gas Company, as part of a larger transportation service involving the delivery of gas purchased by Cominco American Incorporated (Cominco) from Southern Union Gathering Company (Gathering Company). It is intended that a wholly owned subsidiary of Applicant would acquire the capital stock of Gathering Company under the terms of the settlement agreement.

Specifically, Applicant seeks authorization to transport, on a self-executing basis, up to 45 billion Btu of gas per day through the GCNM-PNM facilities. Applicant notes that the gas would ultimately be delivered to Cominco for use as feedstock in the manufacture of fertilizer at it Borger, Texas, plant and for other agricultural uses. The services currently performed by GCNM are said to be identical to the services to be performed by GCNM-PNM.

Applicant states that title to the gas would at all times remain with Cominco. Admitting that its proposed transportation service may not qualify as a self-executing transaction inasmuch as the gas to be transported is not for its system supply for resale, it submits this application for prior Commission approval.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 22, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in

accordance with the Commission's Rules.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 84-26418 Filed 10-4-84; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP84-683-000]

**Public Service Company of New Mexico;**

October 1, 1984.

Take notice that on August 31, 1984 Public Service Company of New Mexico (Applicant), Alvarado Square, Albuquerque, New Mexico 87158, filed in Docket No. CP84-683-000 an application pursuant to section 1(c) of the Natural Gas Act for a declaration of exemption from the provisions of the Natural Gas Act and the rules and regulations of the Commission thereunder, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that the application arises out of an April 12, 1984, settlement and agreement of the "New Mexico Natural Gas Antitrust Litigation," MDL No. 403 (N. Mex.), an action wherein numerous plaintiffs, including Applicant, charged that defendant Southern Union Company (Southern Union), among others, conspired to fix the price of natural gas at the wellhead for distribution in New Mexico in violation of the Sherman Act, 15 U.S.C. 1, *et seq.* (1982).

Applicant contends that a purchase and sale agreement executed on April 12, 1984, in accordance with the aforementioned settlement agreement, provides that Southern Union sell to Applicant all of its properties and assets relating to the distribution, gathering, transmission, and storage of natural gas in New Mexico, including the facilities of Gas Company of New Mexico (GCNM), the New Mexico distribution division of Southern Union. According to Applicant, GCNM would be operated as one of its divisions (GCNM-PNM).

Applicant states that GCNM-PNM would be primarily a natural gas distribution company with facilities located entirely within the State of New Mexico, consisting of seven separate service areas. It is indicated that Applicant must receive Commission authorization to continue the services currently performed by GCNM pursuant to a blanket certificate issued to GCNM in Docket No. CP80-331 (May 8, 1981) as a condition precedent to consummation of the acquisition transaction.

<sup>1</sup>Application for such blanket certificate is pending in Docket No. CP84-680-000.

Applicant asserts that GCNM is currently exempt under section 1(c) of the Natural Gas Act, Docket No. G-15186 (July 28, 1958), and seeks similar exemption from the Commission for its prospective GCNM-PNM division. It is stated that the services to be performed by GCNM-PNM would be identical to those currently performed by GCNM.

Applicant maintains that it is eligible for the exemption inasmuch as all of the gas purchased by Applicant within or at the boundary of New Mexico is and would be consumed within New Mexico, and inasmuch as Applicant's natural gas rates, services, and facilities, including GCNM-PNM, are and will be subject to regulation by the New Mexico Public Service Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 22, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 84-26419 Filed 10-4-84; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP84-708-000]

**Southern Natural Gas Co.; Application**

October 2, 1984.

Take notice that on September 13, 1984, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP84-708-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Atlantic Richfield Company (Atlantic Richfield) certain metering, pipeline and appurtenant facilities located in the Carthage field area, Panola County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Southern States that it owns twelve meter stations in Carthage field together with pipeline and appurtenant facilities connecting said meter stations to the

pipeline system of United Gas Pipe Line Company (United), which meter stations were constructed in order for United to transport, on behalf of Southern, gas purchased by Southern from ARCO Oil and Gas Company, a Division of Atlantic Richfield (ARCO), in Carthage field. It is explained that Southern and ARCO have amended the gas sales agreement covering gas delivered through the subject metering facilities to provide for a new central point of delivery to Southern. On September 13, 1983, in Docket No. CP83-390-000, Southern states that it was authorized under the prior notice procedure of Subpart F of Part 157 of the Commission's Regulations to construct facilities to connect the new central point of delivery in Carthage field to Southern's main pipeline system. Since the facilities authorized in Docket No. CP83-390-000 are now completed and have been placed in service, Southern indicates that it no longer requires the transportation of its Carthage field gas by United or the use of the subject facilities for the implementation of that service. Accordingly, Southern submits that the abandonment of the facilities as proposed by Southern would permit it to eliminate the operation and maintenance expenses associated with such facilities.

Atlantic Richfield has agreed to purchase from Southern for the sum of \$56,400 the subject metering, pipeline and appurtenant facilities for use in the gathering system that ARCO is constructing in Carthage field, it is stated. Southern indicates that the subject facilities have a depreciated value of \$233,984.05. Southern further states that the abandonment of the subject facilities by sale to Atlantic Richfield would represent a cost savings for Southern since Southern would not be required to conduct salvage operations in order to abandon said facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 22, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a

motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

**Kenneth F. Plumb,**  
*Secretary.*

[FR Doc. 84-26421 Filed 10-4-84; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP84-711-000]

**Southern Natural Gas Co.; Request Under Blanket Authorization**

October 1, 1984.

Take notice that on September 17, 1984, Southern Natural Gas Company (Southern), First National Southern Natural Building, Birmingham, Alabama, 35203, filed in Docket No. CP84-711-000 a request pursuant to §§ 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to reassign volumes of gas from the one delivery point to another under the certificate issued in Docket No. CP82-406-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern explains that it makes sales of natural gas to the City of LaGrange (LaGrange) pursuant to the terms of a service agreement between Southern and LaGrange dated September 3, 1969. According to Southern, there are two delivery points located in LaGrange, Troup County, Georgia. Southern states that the first delivery point is the LaGrange Area Station No. 1, located in Southern's Rate Zone 3, and the second is the LaGrange Area Station No. 2, located in Southern's Rate Zone 2. It is

stated that the request for authorization is made pursuant to section(3)(c)(ii) of Article 3 of the Stipulation and Agreement in Docket No. RP83-58, *et al.*, approved by order dated August 21, 1984, wherein Southern agreed to a reduction of 1,224 Mcf of gas in the Zone 3 contract demand and a corresponding increase of 1,224 Mcf of gas in LaGrange's contract demand in Zone 2.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-26422 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-713-000]

**Transcontinental Gas Pipe Line Corp.; Request Under Blanket Authorization**

October 1, 1984.

Take notice that on September 17, 1984, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP84-713-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Federal Paper Board Company, Inc. (Federal Paper Board), under the certificate issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco persons to transport up to 15,000 dt equivalent of natural gas per day for Federal Paper Board for a term ending June 30, 1985. It is stated that the gas would be purchased from McCormick Oil and Gas Company (McCormick) in the North Rucias Field, Brooks County, Texas, and would be used as boiler fuel and process gas at Federal Paper Board's Riegelwood, North Carolina, plant. It is indicated that

Transco would receive the gas at existing interconnections with McCormick in the North Rucias Field and would redeliver equivalent volumes (less quantities retained for compressor fuel and line loss make-up) at existing interconnections with North Carolina Natural Gas Corporation, the distributor serving Federal Paper Board's plant in Riegelwood, North Carolina.

It is stated that Transco would charge the currently applicable transportation rate in accordance with its Rate Schedule T-II, FERC Gas Tariff, Second Revised Volume No. 1.

Transco also requests authorization in Docket No. CP84-713-000 to provide "flexible authority" on behalf of Federal Paper Board to add and/or delete sources of gas and/or receipt or delivery points. With respect to such "flexible authority", Transco states that it would undertake within 30 days of the addition or deletion of any gas suppliers and/or receipt or delivery points, to file with the Commission the following information:

(1) A copy of the gas purchase contract between the seller and Federal Paper Board;

(2) A statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor, and if so, identification of the parties and specification of the current contract price;

(3) A statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(4) A statement that the gas is not committed or dedicated within the meaning of the NGPA section 2(18);

(5) Location of the receipt/delivery points being added or deleted;

(6) Where an intermediary participates in the transaction between the seller and end-user, the information required by § 157.209(c)(ix) of the Commission's Regulations; and

(7) Identity of any other pipeline involved in the transaction.

Transco submits that any changes made pursuant to such "flexible authority" would be on behalf of the same end-user, Federal Paper Board, for use at the same end-use location and would remain within the maximum daily and annual levels proposed herein.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the

time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-26423 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-127-004]

**Transcontinental Gas Pipe Line Corp. and United Gas Pipe Line Co.; Petition To Amend**

October 2, 1984.

Take notice that on August 29, 1984, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, and United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, hereinafter jointly referred to as Petitioners, filed in Docket No. CP82-127-004 a petition to amend the order issued on April 15, 1982, in Docket No. CP 82-127-000, issuing a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, which authorized the transportation and exchange of natural gas between the Petitioners, so as to authorize: (1) An additional source of gas supply, and (2) include two additional points of delivery, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that pursuant to a transportation agreement dated September 24, 1981, they currently exchange a daily contract demand quantity of up to 6 billion Btu of gas and, from time to time, receive additional quantities if capacity is available. It is stated that such gas is currently exchanged by or for the account of the Petitioners from various points in Texas, Louisiana and Mississippi.

By amendatory agreement dated August 12, 1982, Petitioners propose to include Cotton Petroleum Corporation's Sarver No. 1 Well in Leleux Field, Vermilion Parish, Louisiana, as a source of supply for United, together with a corresponding delivery point downstream of Transco's Southwest Gas Leleux Meter on Transco's 6-inch pipeline in Leleux Field, Vermilion Parish, Louisiana.

By a second amendatory agreement dated August 12, 1983, Petitioners further propose to include a new delivery point at United's existing pipeline facilities in Livingston Parish, Louisiana, to receive Transco's existing source of supply.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 22, 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. 84-26407 Filed 10-4-84; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. ER84-560-000]

**Union Electric Co.; Order Accepting for Filing and Suspending Rates, Granting Motion for Waiver of Regulations, Denying Motion to Reject, Granting Intervention, and Establishing Hearing and Price Squeeze Procedure**

Issued September 28, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon and Oliver G. Richard III.

On July 25, 1984, as amended on August 6, 1984, and August 16, 1984, Union Electric Company (Union) submitted for filing proposed changes in its rates for service to 23 wholesale customers under its Electric W-3 and W-4 Wholesale Tariff.<sup>1</sup> Union proposes to consolidate all of its wholesale tariffs into one tariff, which would include both full requirements and partial requirements rates.<sup>2</sup> The proposed rates

<sup>1</sup> See Attachment for rate schedule designations and affected customers. The two amendments consist of corrections which do not affect the proposed rate levels or the cost of service.

<sup>2</sup> Union states that its consolidation of rate schedules is necessary as a result of the recent merger of its former subsidiaries into Union and the need to provide consistent factors in assigning costs to its customers.

would increase revenues by approximately \$36.9 million (74%) based on the calendar 1985 test period. Alternatively, Union proposes to phase in the rates over a period of five years in order to mitigate the effect of the increase on its customers. Under this proposal, in 1985, the first full year after the proposed rates would take effect, the increase would be approximately \$12.5 million (25%), with annual escalations of about 8% for years two through five. Union's proposed phase-in plan calls for: (1) Delayed realization of cash return on a portion of the common equity capital used to finance the Callaway Nuclear Plant (Callaway); (2) more rapid amortization of certain nuclear fuel credits received in payment for abrogation of a fuel contract; (3) substituting units-of-production depreciation for straight line depreciation during the first three years of Callaway's operation; and (4) accelerating the amortization of certain accumulated deferred income taxes related to Callaway. Union also filed a motion for waiver of the Commission's regulations, prescribed by Order No. 144, 15 FERC ¶ 61,133 (1981), *reh. denied*, Order No. 144-A, 18 FERC ¶ 61,163 (1982), in order to allow the company to implement its proposed accounting treatment of deferred income taxes. Union proposes to make the first phase increase effective on October 1, 1984, but requests that it be suspended until January 15, 1985, or the in-service date of Callaway, whichever is later. Union further requests that the Commission take no immediate action on its waiver request, but that the waiver request be considered during this proceeding.

Notice of Union's filing was published in the Federal Register with comments due on or before August 16, 1984, 49 Fed. Reg. 31484 (1984). The Secretary of the Army (the Army) filed a timely protest and motion to intervene on behalf of the Iowa Army Ammunition Plant (IAAP), Middletown, Iowa, which is a customer of Union. The Army requests a hearing, contending that: (1) Union's increased reserve capacity, as a result of bringing the Callaway Plant on line, may be excessive; and (2) Union's proposal to reduce demand intervals from 60 to 15 minutes would permit an aberrational load peak incurred within a 15-minute period to be reflected in billings for the entire month, which would be both unrealistic and a deterrent to energy conservation. The Army also contends that changes in the demand intervals could produce hidden rate increases which may not have been quantified in Union's present filing.

On August 17, 1984, the Wholesale Customers' Defense Group (WDC)<sup>3</sup> filed a motion to intervene out of time, a motion to reject, a request for a five month suspension, and a protest. In support of its motion to reject, the WDC claims that application of the proposed rate schedule would effectively abrogate the City of Kennett's existing interruptible service contract, in violation of the *Mobile-Sierra* doctrine and the Commission's order approving the merger of Union with its former subsidiaries. (25 FERC ¶ 61,394 (1983)). If the Commission does not reject the proposed filing as to interruptible customers, WDC requests that we require Union to maintain the interruptible rates until the company demonstrates under section 206 of the Federal Power Act both that the interruptible tariff should be withdrawn and that the proposed partial requirements tariff is an appropriate substitute. The WDC also seeks rejection based on the allegedly anticompetitive intent and effect of the proposed requirements that W-3 customers take 95% of their power from Union, that W-4 customers maintain outside capacity of 25%, and that all customers enter into five-year contracts before service may begin.

The WDC further contends that Union's filing is deficient inasmuch as it lacks certain supporting workpapers and relevant portions of Union's Missouri retail rate filing, which are allegedly necessary to determine if Union has adhered to the stipulations of a March 1984 Settlement Agreement between the parties.

In support of its suspension request, the WDC raises several cost of service issues including: prudence of the investment in the Callaway Plant; parallel normalization of the same expenses in Union's calculation of unfunded income tax liability and deferred taxes, purportedly resulting in a double recovery; calculation of interest expense for tax purposes; the amount and method of calculating decommissioning costs; rate of return on equity; Union's inclusion of operating reserves in rate base; Union's inclusion in rate base of certain plant held for future use; and use of a 15-minute demand interval. The WDC further contends that a maximum suspension is justified, because the proposed tariff would cause irreparable harm to the

<sup>3</sup>The WDC consists of the Missouri Cities of Centralia, Clarksville, Farmington, Fredericktown, Hannibal, Jackson, Kennett, Kirkwood, Malden, Marceline, Owensville, Perry, Rolla, and St. James; Citizens Electric Corporation of Missouri; and the City of West Point, Iowa.

wholesale customers whose interruptible service and rates would be terminated, and because the proposed W-4 customers will need time to either obtain new power sources or adjust their operations. Finally, the WDG contends that the rates proposed by Union are discriminatory and will result in a price squeeze.

On August 31, 1984, Union filed an answer in opposition to the motions of the WDG.<sup>4</sup> Concerning the motion to reject, Union disputes the WDG's *Sierra-Mobile* argument, stating that, by the terms of the contract between Kennett and Missouri Utilities Company (MU, Union's former subsidiary), the terms of service to Kennett are modifiable under section 205 of the Federal Power Act. Union contends that the service to Kennett is not what is typically thought of as "interruptible," because the contract provides an incentive (via a demand charge penalty) for Kennett to voluntarily interrupt its own take when a new peak is reached, rather than giving Union any contractual right to interrupt such service. Union further claims that the proposed W-4 partial requirements service is a reasonable alternative to the SFR-1 rate under which Kennett was served by MU. Union contends that the question of the reasonableness of the rate for service to Kennett does not merit outright rejection of the company's filing. Rather, it should be the subject of a hearing.

With respect to the WDG's motion to reject as to other W-4 customers, Union states that the rates for service to Jackson and Malden are the same as those for Kennett, while the rate schedules for the other three W-4 customers contain no interruptible provisions. Union further contends that the Commission, by its order approving the merger of Union and its subsidiaries, did not intend to insulate wholesale customers from any Callaway-related rate increase, and that those costs have nothing to do with the merger. Union also argues that the WDG's alternative request to treat the filing as a section 206 filing is not supported by any authority.

In response to the WDG's opposition to the requirement that a W-3 customer must take at least 95% of its power from Union, the company argues that the 95% requirement is consistent with the terms of the current W-3 tariff, which provide that a customer must take "all or substantially all" of its power from the company. Union further states that the

proposed tariff does not prohibit customers from taking more than 50% of their power from other sources. Rather, it provides that those taking more would be served under the W-4 rate. Union contends that a prior WDG objection to the 5-year contract provision was rejected by the Commission in Opinion No. 94, Docket No. ER77-614, 12 FERC ¶ 61,239 (1980), *aff'd*, *Union Electric Co. v. FERC*, 668 F.2d 389, 398 (8th Cir. 1981). Finally, Union denies all of the WDG's allegations relating to the sufficiency of the filing, the request for a maximum suspension, price squeeze, and price discrimination.

#### Discussion

The timely filed intervention of the Army serves to make it a party to this proceeding pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214). In view of the fact that Union does not object to the WDG's intervention and given the early stage of this case, we find that good cause exists to grant the WDG's motion to intervene out of time.

We question the WDG's claim that the proposed filing eliminates interruptible service. The present service (assumed by Union from its former subsidiary, Missouri Utilities Company (MU), after merger) is not interruptible and is in fact, by its own terms firm. The present service is "interruptible" only insofar as the customers (Kennett, Jackson, and Malden) were allowed to peak shave to avoid being billed for MU's purchased demand expenses from Union. Since MU no longer exists to purchase from Union, the "interruptible" provision appears to be meaningless.<sup>5</sup>

In addition, we note that MU's 1974 contract with Kennett provides for unilateral modification by the company.<sup>6</sup> Thus, we perceive no reason why the *Mobile-Sierra* doctrine would preclude this filing. We also find, particularly in light of Union's response to WDG's pleading, that the tariff provisions challenged as anticompetitive present questions of fact best resolved in the context of an evidentiary proceeding. With respect to the WDG's contention that the filing is deficient, we find that Union's submittal substantially complies with the Commission's filing

<sup>5</sup> We note that the parties were required to adhere to this provision until this superseding filing was made for the reasons set forth in our earlier order, 28 FERC ¶ 61,239.

<sup>6</sup> Section 2 of the contract provides, in relevant part: The terms of this agreement, including the rates and General Rules and Regulations, are subject to modification from time to time to conform to any change made by Company or ordered by the Federal Power Commission which shall become effective under the Power Act.

requirements. Accordingly, we shall deny the WDG's motion to reject.

Our preliminary review of the instant filing and the pleadings indicates that Union's rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

Rate phase-in plans are a relatively new concept and are intended to mitigate the impact to customers of rate shock caused by sudden, sizable increases in rates due to the addition of a new major generating plant or other facility. Union cites instances where five State commissions have approved phase-in plans for electric utilities since 1983.<sup>7</sup> Union has indicated that, although the elasticity of electricity prices is not known, it is likely that an increase of this magnitude might reduce purchases by the customers to the point that Union would be unable to earn its authorized return in any event.

We view that phase-in as a potentially beneficial alternative to Union's "traditional" rates insofar as it mitigates the impact of a substantial rate increase and the potential for price squeeze on Union's wholesale customers.<sup>8</sup> However, the phase-in plan involves other ratemaking and accounting adjustments that we have not had time to fully evaluate. We shall therefore accept the phase-in plan for filing and suspend it for one day, since the rates for the first year do not appear to be substantially excessive,<sup>9</sup> to become effective on January 15, 1985, or the in-service date of the Callaway Nuclear Plant, whichever is later. However, we hereby set for hearing the issue of the phase-in itself as well as the level of the proposed rates. We also set for hearing the specific amounts, amortization periods, etc. that should be included in the phase-in plan. We also note that the unit of production depreciation method, for example, must be properly integrated with the fuel adjustment clause to prevent double recovery of depreciation costs.<sup>10</sup>

We shall also grant waiver at least initially of Order No. 144 and § 35.25 of the regulations in order to permit Union

<sup>7</sup> Pennsylvania, New Mexico, Illinois, New York, and South Carolina.

<sup>8</sup> We note that Union has filed phase-in rates at the retail level.

<sup>9</sup> See *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982).

<sup>10</sup> Any necessary action with respect to accounting procedures proposed by Union will be dealt with in a separate letter directive from the Office of the Chief Accountant.

<sup>4</sup> Union, while noting that the WDG's motion to intervene was untimely, states that it does not object to the WDG's intervention on that basis.

to use a more rapid amortization of deferred income taxes.

Since other companies may wish to propose deferral and subsequent recoupment of revenues in other situations, we also take this opportunity to note that the Commission will decide to accept or reject other phase-in plans on a case-by-case basis and that our initial acceptance of any ratemaking or accounting treatment in this filing is not to be construed as precedent for other situations.

Union's rate filing presents the Commission with its first opportunity to consider a phased-in rate increase. It may well be the first of many such proposals. The Commission recognizes that proposals to phase plant in service to a utility's rate base raise profound issues about the nature of what has hitherto been a traditional aspect of public utility regulation. Such proposals carry with them the potential for substantial, long-term modification of existing relationships between utilities' ratepayers and stock-holders.

Given the impact that our action on phase-in proposals may have on both groups and on the industry itself, it is essential that this Commission's actions on them result in a consistent and predictable framework for dealing with them. We therefore direct the Commission's staff, and invite the other parties to this proceeding, to present the Commission with as comprehensive a treatment as possible of the policy issues raised by phase-in proposals.

In light of the WDG's price squeeze allegations, we shall institute price squeeze procedures and phase those

proceedings in accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979).

*The Commission orders:*

(A) The WDG's untimely intervention is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) The WDG's motion to reject Union's rates is hereby denied.

(C) Union's motion for waiver of the Commission's regulations is hereby granted, as discussed in the body of this order, for good cause shown.

(D) Union's phase-in rates are hereby accepted for filing and suspended, with the first phase to become effective, subject to refund, as of January 15, 1985, or the in-service date of the Callaway Nuclear Plant, whichever date is later. Each successive phase shall take effect, subject to refund, in one-year intervals beginning one year after the first phase rate increase takes effect. Union shall advise the Commission within fifteen (15) days after each rate phase takes effect.

(E) Pursuant to authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Union's rates.

(F) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426. Such conference shall be held for purposes of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause shown. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(I) The Secretary shall promptly publish this order in the *Federal Register*.

By the Commission,  
**Kenneth F. Plumb,**  
Secretary.

UNION ELECTRIC COMPANY RATE SCHEDULE DESIGNATIONS

[Docket No. ER84-560-000]

Designation	Description
(1) FERC Electric Tariff, Original Volume No. 5 (Supersedes FPC Electric Tariff Original Volume No.2, FERC Electric Tariff Volume Nos. 3, 4, and all supplements under Electric Rate Schedules FPC No. 86, FERC Nos. 107, 108, 109, 110, 111, 112, 113 and 115).	W-3/W-4 Tariff, Full and Partial Requirements Original Sheet Nos. 1 through 24 including Original Schedule Nos. 5 and 7 for 1st Year Phase-in.
(2) 1st Revised Sheet Nos. 5 and 7 under FERC Electric Tariff, Original Volume No. 5 (Supersedes Original Sheet Nos. 5 and 7).	2nd Year Phase-In.
(3) 2nd Revised Sheet Nos. 5 and 7 under FERC Electric Tariff, Original Volume No. 5 (Supersedes 1st Revised Sheet Nos. 5 and 7).	3rd Year Phase-In.
(4) 3rd Revised Sheet Nos. 5 and 7 under FERC Electric Tariff, Original Volume No. 5 (Supersedes 2nd Revised Sheet Nos. 5 and 7).	4th Year Phase-In.
(5) 4th Revised Sheet Nos. 5 and 7 under FERC Electric Tariff, Original Volume No. 5 (Supersedes 3rd Revised Sheet Nos. 5 and 7).	5th Year Phase-In.
(6) Service Agreement under FERC Electric Tariff, Original Volume No. 5 (Redesignation of Electric Rate Schedule FERC No. 107).	Clarksville Contract: Dated: Sept. 4, 1973, Effective Feb. 19, 1974.
(7) Service Agreement under FERC Electric Tariff, Original Volume No. 5 (Redesignation of Electric Rate Schedule FERC No. 108).	Centralia Contract: Date: Aug. 20, 1974, Effective Jan. 3, 1975.
(8) Service Agreement under FERC Electric Tariff, Original Volume No. 5 (Redesignation of Electric Rate Schedule FERC No. 109).	Kahoka Contract: Dated May 12, 1975, Effective May 12, 1975.
(9) Service Agreement under FERC Electric Tariff, Original Volume No. 5 (Redesignation of Electric Rate Schedule FERC No. 110).	Perry Contract: Date Feb. 1, 1977, Effective Feb. 1, 1977.
(10) Service Agreement under FERC Electric Tariff, Original Volume No. 5 (Redesignation of Electric Rate Schedule FERC No. 111).	Owenville Contract: Date June 8, 1981, Effective Oct. 1, 1981.
(11) Service Agreement under FERC Electric Tariff, Original Volume No. 5 (Redesignation of Electric Rate Schedule FERC No. 112).	Marceline Contract: Dated Oct. 19, 1981, Effective Mar. 1, 1982.
(12) Service Agreement under FERC Electric Tariff, Original Volume No. 5 (Redesignation of Electric Rate Schedule FERC No. 113).	Linneus Contract: Dated Nov. 12, 1981, Effective Dec. 7, 1981.
(13) Service Agreement under FERC Electric Tariff, Original Volume No. 5 (Redesignation of Electric Rate Schedule FERC No. 115).	California Contract: Dated Apr. 18, 1977, Effective Sept. 2, 1977.

## UNION ELECTRIC COMPANY RATE SCHEDULE DESIGNATIONS—Continued

[Docket No. ER84-560-000]

Designation	Description
(14) Service Agreement under FERC Electric Tariff, Original Volume No. 5 (Redesignation of Electric Rate Schedule FPC No. 86).	Mannibal Contract: Dated July 5, 1973, Effective June 1, 1973.

All previously designated Service Agreements under FERC Electric Tariff, Original Volume Nos. 3 and 4 have been redesignated as Service Agreements under Tariff Volume No. 5.

[FR Doc. 84-26408 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01

[Docket No. ER84-579-000]

**AEP Generating Co.; Order Accepting for Filing and Suspending Rates, Granting Late Intervention, Denying Requests To Reject or To Consolidate, Granting Waiver, and Establishing Hearing Procedures**

Issued: October 1, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon and Oliver G. Richard III.

On August 2, 1984, AEP Generating Company (AEGCO) tendered for filing two unit sale agreements with Indiana and Michigan Electric Company (I&M) and Kentucky Power Company (KEPCO).<sup>1</sup> AEGCO, I&M, and KEPCO are all subsidiaries of American Electric Power Company (AEP). AEGCO and I&M each own 50 percent of the Rockport Unit No. 1, a new coal-fired generating plant, and will own 50 percent of Rockport Unit No. 2, which is scheduled for completion in 1988. Under the proposed agreements, AEGCO will sell I&M and KEPCO 35 percent and 15 percent, respectively, of the total capacity of Rockport Unit No. 1. The unit sale agreements provide for a formula rate which AEGCO proposes to implement as of the date of commercial operation of Rockport Unit No. 1 (now estimated to be early in December, 1984). However, with respect to the I&M contract, AEGCO requests waiver of the notice requirements so that the part of the agreement related to billings and payment for test power and energy may be made effective on or about September 1, 1984, the earliest expected date on which test power will be available for sale by AEGCO to I&M.<sup>2</sup>

<sup>1</sup> See Attachment for rate schedule designations.

<sup>2</sup> AEGCO requested that the AEGCO/KEPCO agreement be accepted conditionally, to be made effective only if KEPCO failed to receive a certificate of convenience and necessity from the Kentucky Public Service Commission to purchase 15% ownership share in the plant itself. That triggering event has occurred. By order dated

Notice of AEGCO's filing was published in the *Federal Register* with responses due on or before August 24, 1984. A timely notice of intervention was filed by Kentucky Public Service Commission. Timely motions to intervene were filed by the Attorney General of Kentucky (Attorney General); Virginia Electric and Power Company (VEPCO); the Indiana and Michigan Municipal Distributors Association<sup>3</sup> and the City of Auburn, Indiana (together, IMMDA); the Indiana Municipal Power Association (IMPA);<sup>4</sup> and a group of industrial customers of KEPCO (the industrial customers).<sup>5</sup> An untimely motion to intervene and protest was filed by the Residential Patrons of KEPCO (Residential Customers).<sup>6</sup>

The Attorney General alleges that the AEGCO/KEPCO agreement represents an attempt to circumvent the recent decision of the Kentucky Commission denying KEPCO's application to acquire an ownership interest in Rockport and finding that KEPCO can purchase capacity less expensively through the AEP Pool. The Attorney General therefore requests that AEGCO's filing be dismissed or, in the alternative, suspended and set for hearing.

IMMDA raises a number of issues including rate of return, synchronization of income taxes and interest expense, the design of the formula rate, late payment charges, and I&M's need for additional capacity. IMMADA asks for an investigation and a one day suspension.

August 2, 1984, the Kentucky Commission denied KEPCO's application for such a certificate on the ground that KEPCO could acquire the needed capacity at substantially lower cost by purchases through the AEP Power Pool.

<sup>3</sup> IMMADA includes the Cities and Towns of Avilla, Bluffton, Columbia City, Garrett, Gas City, Mishawaka, New Carlisle and Warren, Indiana, and the Cities of Niles, South Haven, and Sturgis, Michigan.

<sup>4</sup> IMPA purchases electricity from I&M for resale to its 26 members, including the Cities of Richmond and Anderson, Indiana, and the Town of Frankton, Indiana, which were formerly served directly by I&M.

<sup>5</sup> Air Products and Chemicals, Inc., Ashland Oil Inc., Huntington Alloys, Inc., Kentucky Electric Steel Co., Chisholm Mine (Pickands Mather & Co., Managing Agent), and Scotts Branch Mine (A Joint Venture, Scotts Branch Co., Managing Agent).

<sup>6</sup> The Residential customers consist of three individual KEPCO customers (Bert Diamond, Ruth Scott, and John Henry Ward) and the Concerned Citizens of Martin County, Inc., stated to be representing other KEPCO customers.

IMPA also requests a one day suspension, as well as consolidation with I&M's general rate case in Docket Nos. ER84-589-000, ER84-590-000, and ER84-591-000. In support of its request for suspension, IMPA questions the requested rate of return and capitalization. With regard to consolidation, IMPA alleges that there are questions of fact common to all the proceedings involving I&M, specifically mentioning rate of return.

The industrial customers move for rejection of the filing or a five month suspension of the AEGCO/KEPCO agreement. In support of rejection, the industrial customers allege that the Kentucky Commission has subject matter jurisdiction with regard to the unit sale agreement and that the principles of res judicata and collateral estoppel apply to that agency's decision. The Residential Customers also refer to the Kentucky Commission's action and request that the filing be dismissed or suspended and set for hearing.

While VEPCO has not raised any substantive issues, it notes that it is currently negotiating a unit sale agreement with AEGCO for power from Rockport Unit No. 1, for a period beginning January 1, 1987, at a rate which would be based on the rates contained in the proposed AEGCO/I&M agreement.

On September 10, 1984, AEGCO, KEPCO, and I&M filed a joint answer to the various interventions. They object to intervention by the Residential Customers on the grounds that they have not shown any interest which cannot be adequately represented by the Kentucky Attorney General. AEGCO, KEPCO, and I&M also dispute the jurisdictional arguments advanced by the Attorney General and the industrial customers.

#### Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the Kentucky Commission's notice of intervention and the timely interventions of the Attorney General, IMMADA, IMPA, the industrial customers, and VEPCO serve to make them parties to this proceeding. In addition, given the early stage of this proceeding, the lack of prejudice to the

existing parties, and the potential interest in this proceeding stated by the Residential Customers, we find that good cause exists to permit them to intervene out of time notwithstanding the opposition to their intervention by AEGCO, I&M, and KEPCO.

The request for rejection of AEGCO's filing will be denied. While the Kentucky Commission has jurisdiction to consider the appropriateness of KEPCO's acquisition of new facilities, the jurisdictional issue before this Commission is whether the proposed rates and terms for AEGCO's sales of power to I&M and KEPCO are just and reasonable. There is no overlap or conflict between these regulatory roles. Notwithstanding a decision of the Kentucky Commission regarding power supply alternatives that might be available to KEPCO, we have an independent responsibility to evaluate the reasonableness of the proposed wholesale agreements.

IMPA's motion for consolidation with Docket Nos. ER84-589-000, ER84-590-000, and ER84-591-000 also will be denied. AEGCO, VEPCO, the Kentucky Commission, the Attorney General, and the Residential Customers are not parties to the I&M wholesale rate cases. In addition, it appears that rate of return and capital structure may be the only issues common to all proceedings. In our view, there is insufficient commonality of issues and parties to justify consolidation.

Our preliminary review of AEGCO's filing and the pleadings indicates that the submittal has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the agreements for filing and suspend them as ordered below.<sup>7</sup>

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we noted that rate filings would ordinarily be suspended for one day where preliminary review indicates that the proposed rates may be unjust and unreasonable but may not generate substantially excessive revenues, as defined in *West Texas*. Our preliminary review suggests that AEGCO's filing may not, at least in early years, yield substantially excessive revenues. Further, we conclude that good cause exists to waive the notice requirements

<sup>7</sup> We note that AEGCO has characterized its submittal as comprising initial rate schedules among the parties. Even if we were to accept this characterization, we have previously concluded that the Commission has the authority to suspend initial rates under section 205 of the Federal Power Act. See *Middle South Energy, Inc.* 23 FERC ¶ 61,277, at 61,572 (1983).

so that billings for test power and energy may commence when test power and energy become available. Accordingly, we shall suspend the proposed rates for a nominal period, to become effective, subject to refund, as provided in Ordering Paragraph (D) below.

#### The Commission Orders

(A) The Residential Customers' untimely motion to intervene is granted, subject to the Commission's Rules of Practice and Procedure.

(B) The motions to reject AEGCO's filing are hereby denied.

(C) AEGCO's motion for waiver of notice is hereby granted.

(D) AEGCO's proposed rates are hereby accepted for filing and are suspended, with the provisions applicable to test energy rates to take effect, subject to refund, upon the initiation of sales of test energy, and the balance of AEGCO's submittal to become effective, subject to refund, on the date that commercial service from Rockport Unit No. 1 commences. AEGCO shall advise the Commission of the date on which sales of test energy commence and the date on which service under the full cost of service formula commences within fifteen (15) days after each such date.

(E) IMPA's motion for consolidation of this proceeding with Docket Nos. ER84-589-000, ER84-590-000, and ER84-591-000 is hereby denied.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of AEGCO's rates.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days from the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Secretary shall promptly

publish this order in the **Federal Register**.

By the Commission.

**Kenneth F. Plumb,**  
Secretary.

#### AEP GENERATING CO., RATE SCHEDULE DESIGNATIONS

[Docket No. ER84-579-000]

Designation	Description/other party
(1) Rate schedule FERC No. 1.	Unit power agreement, Indiana & Michigan Electric Co. Sample Power Bill Co.
(2) Supplement No. 1 to rate schedule FERC No. 1.	
(3) Rate schedule FERC No. 2.	Unit power agreement, Kentucky Power Co. sample Power Bill.
(4) Supplement No. 1 to rate schedule FERC No. 1.	

[FR Doc. 84-26509 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-20-000 and TA85-1-20-001]

#### Algonquin Gas Transmission Co.; Tariff Filing Under Purchased Feedstock Adjustment Clause

October 1, 1984.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on September 14, 1984, tendered for filing Fifth Revised Sheet No. 202 pursuant to its Rate Schedule SNG-1 Purchased Feedstock Adjustment Clause, as contained in its FERC Gas Tariff, Second Revised Volume No. 1, decreasing the applicable rate by 19.51¢ per MMBtu reflecting a lower cost of feedstock for the 1984-85 season. The adjustment is filed to be effective as of October 16, 1984.

Algonquin Gas notes that a copy of this filing is being served upon all affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 9, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 84-28510 Filed 10-4-84; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP84-701-000]

**Cranberry Pipeline Corp.; Application**

October 3, 1984.

Take notice that on September 6, 1984, Cranberry Pipeline Corporation (Applicant), 1400 Charleston National Plaza, Charleston, West Virginia 25325, filed in Docket No. CP84-701-000 an application pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and § 284.127 of the Commission's Regulations authorizing Applicant to transport natural gas for Consolidated Gas Supply Corporation (Consolidated) for a period in excess of two years, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to the terms of an exchange agreement dated August 18, 1983, it would transport not more than 5,000 dt equivalent of gas per day for Consolidated. Applicant states that pursuant to a corporate reorganization and subject to an order of the Commission granting Cabot Corporation (Cabot) authority to abandon a related sale and exchange, it has requested the subject authority to transport gas under Section 311 of the NGPA for a period in excess of two years. Applicant further states that the August 18, 1983, exchange agreement replaces Cabot's multi-well agreement in Rate Schedule No. 6 certificated by the Commission in Docket No. G-5236.

Applicant avers that the proposed service would extend for a primary term ending March 1, 1998, and thereafter until terminated by either party upon twelve months notice. Applicant further avers that it seeks rate approval pursuant to § 284.123(b)(2) of the Commission's Regulations and that there is no charge to either party for the exchange.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 23, 1984, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed

with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 84-28511 Filed 10-4-84; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP84-138-000]

**Lawrenceburg Gas Transmission Corp.; Proposed Change in FERC Gas Tariff**

October 1, 1984.

Take notice that on September 20, 1984 Lawrenceburg Gas Transmission Corporation (Lawrenceburg) tendered for filing one (1) revised gas tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, to become effective September 13, 1984:

Thirty-fourth Revised Sheet No. 4

Lawrenceburg states that its tariff sheet was filed to comply with Commission Order No. 380 issued May 25, 1984 which required that purchased gas costs be stated separately in all pipeline sales tariffs.

Copies of this filing were served upon Lawrenceburg's jurisdictional customers and interested state 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 Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 9, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 84-28512 Filed 10-4-84; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP84-705-000]

**Natural Gas Pipeline Co., of America; Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application**

October 3, 1984.

Take notice that on September 11, 1984, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, jointly referred to as Applicants, filed in Docket No. CP84-705-000 a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a certain gas exchange service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they agreed to undertake a delayed exchange of up to 109,500,000 Mcf of gas at various points offshore Louisiana and onshore Texas and Louisiana, over a period of eight years pursuant to an exchange agreement dated July 15, 1969. Applicants further state that the Commission issued an order on December 8, 1969, in Docket Nos. CP70-56 (Natural) and CP70-57 (Tennessee) authorizing the delayed exchange between Applicants and the construction and operation of certain facilities in Wharton and Brooks Counties, Texas, to implement the exchange. It is indicated that on November 16, 1977, this order was amended to authorize a revised exchange agreement and the extension of the term of the exchange until December 31, 1978, and year to year thereafter, the addition of eight exchange points, and the elimination of daily volume limitations, and the exchange of gas on a gas-for-gas basis.

Applicants herein propose to abandon the aforementioned exchange as of December 31, 1982. It is explained that volumes of gas exchanged under the agreement were in balance by December 31, 1982. Applicants state that they have determined and agreed that termination of the exchange agreement is in the best interests of both parties and have, therefore terminated the exchange agreement as of December 31, 1982, and have done so by a letter agreement dated May 12, 1983. It is further stated that the Applicants do not propose to abandon any facilities and that the facilities constructed by Applicants in Wharton and Brooks Counties would be retained. Applicants indicate that upon approval of the abandonment requested

herein, they would delete Rate Schedule X-22 and X-24 from Natural's and Tennessee's respective tariffs.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 23, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-26513 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-693-000]

**Northern Natural Gas Co., Division of InterNorth, Inc.; Application**

October 3, 1984.

Take notice that on September 4, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84-693-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon and remove

one 500 horsepower compressor unit located in Finney County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the station suction pressure at the Finney County No. 3 gathering station needed to be lowered to achieve the desired volume requirements from the Finney County No. 3 gathering station for the 1983/84 heating season and thereafter.

Consequently, Northern states that it performed certain modifications at the Finney County No. 3 gathering station to achieve the desired suction pressure at the compressor station. As a result of such modifications, Unit No. 2, a 500 horsepower compressor unit was no longer required and as such was idled, it is explained.

Northern asserts that the proposed abandonment of the 500 horsepower compressor unit would serve the public interest since said compressor is no longer needed and consequently serves no useful purpose.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 23, 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 Regulation 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 persons wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules and Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion for intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion of leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided, for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 84-26514 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-710-000]

**Northwest Central Pipeline Corp.; Application**

October 3, 1984.

Take notice that on September 14, 1984, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP84-710-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the Driftwood Compressor Station and appurtenant facilities in Barber County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest Central requests authorization to abandon the Driftwood Compressor Station by reclaiming certain facilities and leaving in place other facilities. The station, it is explained, contains one 230 horsepower compressor unit and appurtenant facilities. Northwest Central states that the facilities were installed in 1964 to compress natural gas purchased in the area to enable such gas to enter into its Barber County 20-inch pipeline. Northwest Central avers that such facilities are no longer necessary since there is excess horsepower available in the area, and system piping allows all gas in the Driftwood area to be compressed by other existing field compressors in Barber County. Northwest Central estimates that its cost to reclaim these facilities would be \$12,311, and states that the estimated salvage value of the facilities is \$42,760.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 23, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in an subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest Central to appear or be represented at the hearing.

**Kenneth F. Plumb,**  
Secretary.

[FR Doc. 84-26515 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-43-000 and 001]

**Northwest Central Pipeline Corp.;  
Proposed Changes in FERC Gas Tariff**

October 1, 1984.

Take notice that Northwest Central Pipeline Corporation (Northwest Central) on September 20, 1984, tendered for filing Second Revised Sheet No. 6 and Fourth Revised Sheet Nos. 7 and 8 to its FERC Gas Tariff, Original Volume No. 1. Northwest Central states that pursuant to the Purchased Gas Adjustment in Article 21 and the Incremental Pricing Provisions in Article 24 of its FERC Gas Tariff, it proposes to increase its rates effective October 23, 1984, to reflect:

(1) A 7.11¢ per Mcf decrease in the Cumulative Adjustment due to a decrease in Northwest Central's projected gas purchase costs.

(2) A 14.17¢ per Mcf increased Surcharge Adjustment (to a negative 13.71¢ per Mcf from a negative 27.88¢ per Mcf) to amortize the Deferred Purchased Gas Cost Subaccount balance.

(3) A .20¢ per Mcf decreased Advance Payment Rate Adjustment (to a negative 1.29¢ per Mcf from a negative 1.09¢ per Mcf) in compliance with the Stipulation

and Agreement in Docket No. RP82-114-000, *et al.*

This filing reflects the continuation of a pattern of gas purchases designed to produce a purchased gas cost at a level which will permit gas to be sold competitively in Northwest Central's markets.

Northwest Central states that copies of its filing were served on all jurisdictional customers, interested state commissions and all parties to the proceedings in Docket No. RP82-114-000.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 9, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 84-26516 Filed 10-4-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-519-001]

**Rural Energy Systems, Inc., Applicant;  
Northern Natural Gas Company,  
Division of InterNorth Inc.; Iowa Public  
Service Company, Respondents;  
Amendments**

October 3, 1984.

Take notice that on August 27, 1984, Rural Energy Systems, Inc. (Applicant), P.O. Box 511, Dakota City, Nebraska 68731, filed in Docket No. CP84-519-001 an amendment to its pending application filed on June 26, 1984, in Docket No. CP84-519-000 pursuant to section 7(a) of the Natural Gas Act so as to reflect the level of service requested by Applicant, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In Docket No. CP84-519-000, Applicant requested a connection to Northern Natural Gas Company, a Division of InterNorth, Inc.'s (Northern) facilities near Dakota City, Nebraska, for the purpose of selling gas to Applicant's parent company, IBP Inc.

(IBP), and, if able, to other customers and residences in the area. Applicant then explained that the gas required would be 5,800 Mcf for a peak day requirement in the third year of operation and 1,000,000 Mcf per year for the third annual requirement. Based on these estimates, Applicant filed as part of its application in Docket No. CP84-519-000 Exhibit N—*Reserves, expenses income* and Exhibit P—*Rates*.

Applicant in a September 18, 1984, supplement now states that it does not intend to purchase all of its expected gas requirements from Northern. It is indicated that the service desired would be a partial 907 Mcf per day firm gas sales service under Northern's Rate Schedule CD-1 (Zone 2) and a transportation service up to 2,093 Mcf per day under Northern's End User Transportation Rate Schedule EUT-1. As a result, Applicant amended its Exhibits N and P in order to reflect the 3,000 Mcf per day level of service now desired. For the described service, Applicant alleges that the delivered price to IBP would be the cost of service for firm sales to IBP.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before October 23, 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 156.9). 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. Persons who have heretofore filed need not file again.

**Kenneth F. Plumb,**  
Secretary.

[FR Doc. 84-26517 Filed 10-4-84; 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; Corrections**

In Federal Register Volume 49, No. 172, September 4, 1984, make the following corrections:

On page 34901: In the first column in the third full paragraph, first line, change "1983" to "1938".

In the second column in item 4, tenth line, change the word "abaout" to "about".

On page 34902: In the third column, sixth line, change the word "Contract" to "Control".

On page 34903: In the third column in the third paragraph, tenth line, change the word "mandtory" to "mandatory".

On page 34904: In the third column, in the first paragraph, last line, change the word, "perference" to "preference".

On page 34907: In the second column, sixth line, change the word "bublic" to "public".

In the third column in the first full paragraph, twenty-third line, add a comma after the word "Congress".

On page 34908: In the first column in the first full paragraph, twenty-fourth line, delete the letter "s" following the apostrophe in the word "statutes's".

On page 34915: In the first column in the first full paragraph, tenth line, change the word "Northen" to "Northern".

On page 34916: In the first column in the second full paragraph, fourth line, change the word "intergration" to "integration".

On page 34919: In the third column in item 5.b., fourth line, change the word "negotiations" to "negotiating".

In the third column in item 5.c., fifth line, change the word "enterprise" to "Enterprise".

In the second column, in line 3 of the third paragraph, change 4,425,674 kWh to 1,472,945 kWh, and in line 4 change 1,959,243 kWh to 1,132,616 kWh.

On page 34920: In the first line of the first column, change 1, 472,945 kWh to 4,425,674 kWh.

In the second line of column 1, change 1,132,616 kWh to 1,959,243 kWh.

In the first column in the second paragraph of item 6.b., fifth line, change the work "Association," after the word "Power".

In the second column in item 1.a, tenth line, change the word "seasonably" to "seasonally".

On page 34924: In the second column in the second paragraph, seventeenth line, change the word "povide" to "provide".

On page 34925: In the second column in item 3 sixth line, change the word "avarage" to "average".

On page 34926: In the second column in the fourth paragraph, tenth line, change the word "opition" to "option".

On page 34927: In the third column in the continuation paragraph, fourth line,

change the word "Participating" to "Participating".

In the second column in item B.1., continue the first paragraph in the third column under the second line in item B.1 in the second column.

In the second column item A.1., continue the continuation paragraph and last two paragraphs in the third column under the third line in item A.1. in the second column.

On page 34928: In the first column in item D, fourth line, change the word "Grando" to "Grande".

In the second column, first line, change the word "the" to "that".

In the second column in the continuation paragraph, thirteenth line, change the word "resource" to "resources".

In the second column in item E, sixth line, change the period after the word "priority" to a colon.

In the second column in item E, seventeenth line, change the word "recognized" to "recognize".

In the second column in item A.2., fourth line, change the word "aviod" to "avoid".

On page 34929: in the first column in the continuation paragraph, last line, change the word "Customer" to "customer".

In the second column, fourth line, change the word "Intergrated" to "Integrated".

In the second column in item 1.b., second line, change the word "delivey" to "delivery".

In the second column in item 2.a, sixth line, change the word "agreement" to "agreements".

On page 34931: In the third column in the title in the first paragraph, third line, change the word "Resoruces" to "Resources".

On page 34933: In the first column in the third paragraph, third line, change the word "commitment" to "commitments".

On page 34937: In the eighth column labeled "DIFFERENCE (MWH)", last line, change the number "-53,645." to "-53,645.4".

On page 34941: In the fifth column labeled "RES POOL 5 ALLOCATION (MWH)", change to first line of the column heading from "RES POOL 5" to "RES POOL 6".

In the sixth column labeled "RES POOL 3 ALLOCATION (MWH)", change the first line of the column heading from "RES POOL 3" to "RES POOL 4".

In the eighth column labeled "RES POOL 5 ALLOCATION (MW)", change the first line of the column heading from "RES POOL 5" to "RES POOL 6".

In the ninth column labeled "RES POOL 3 ALLOCATION (MW)", change the first line of the column heading from "RES POOL 3" to "RES POOL 4".

Issued in Golden, Colorado, September 25, 1984.

Robert L. McPhail,  
Administrator.

[FR Doc. 84-26521 Filed 10-4-84; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59172; TSH-FRL 2686-5]

### Certain Chemicals; Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

**DATE:** Written comments by: October 22, 1984.

**ADDRESS:** Written comments, identified by the document control number "[OPTS-59172]" and the specific TME number should be sent to: Document Control officer (TS-793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

**TME 84-83**

*Close of Review Period.* November 11, 1984.

*Manufacturer.* Confidential.  
*Chemical.* (G) Polymonocyclic urethane.

*Use/Production.* (G) Industrial coating having a non-dispersive use. Prod. range: 53,700 kg/75 days.

*Toxicity Data.* No data on the TME substance submitted.

*Exposure.* Manufacture and processing: Dermal, a total of 16 workers, up to 8 hrs/da, up to 26 da/yr.

*Environmental Release/Disposal.* 10 to 129 kg/batch released to land. Disposal by incineration and landfill.

**TME 84-84**

*Close of Review Period.* November 10, 1984.

*Manufacturer.* Confidential.  
*Chemical.* (G) Succinate ester.

*Use/Production.* (G) Dispersive use. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential. Disposal by publicly owned treatment works (POTW).

Dated: October 1, 1984.

Linda A. Travers,  
Acting Director, Information Management Division.

[FR Doc. 84-26485 Filed 10-4-84; 8:45 am]

BILLING CODE 6560-50-M

**[ER-FRL-2686-3]**

**Availability of Environmental Impact Statement Filed September 24, 1984, Through September 28, 1984, Pursuant to 40 CFR 1506.9**

**Responsible Agency**

Office of the Federal Activities,  
General Information (202) 382-5073 or (202) 382-5075.

EIS No. 840422, Final, COE, AL, MS, Tennessee-Tombigbee Waterway, Wildlife Mitigation Feasibility Study, Due: Nov. 5, 1984, Contact: Joseph Wilson (205) 694-4110.

EIS No. 840435, Draft, AFS, VA, WV, George Washington National Forest Land and Resource Management Plan, Due: Jan. 18, 1984, Contact: Malcolm Cockerman (703) 433-2491.

EIS No. 840436, Final, BLM, ND, North Dakota Livestock Grazing Management Plan, Due: Nov. 5, 1984, Contact: Raymond Altop (701) 225-9148.

EIS No. 840437, Final, BLM, NM, Roswell Resource Area, Rangeland Management Plan, Due: Nov. 5, 1984, Contact: Linda Rundell (505) 624-1790.

EIS No. 840438, Draft, FHWA, HI, Alii Highway Construction, Kailu-Kona to Keauhou, Hawaii County, Due: Nov. 19, 1984, Contact: H. Kusumoto (808) 546-5150.

EIS No. 840439, Draft, HUD, NY, Norstar Plaza Development (UDAG), Albany County, Due: Nov. 19, 1984, Contact: Vincent McArdle (518) 447-8311.

EIS No. 840440, Final, NOAA, MA, Waquoit Bay National Estuarine Sanctuary, Designation, Barnstable County, Due: Nov. 5, 1984, Contact: Dr. Nancy Foster (202) 634-4236.

EIS No. 840441, DSuppl, FHWA, VA, I-664 Construction, Hampton, Newport News and Suffolk, Due: Nov. 19, 1984, Contact: James Tumlin (804) 771-2371.

EIS No. 840442, Draft, FWS, AK, Isembek National Wildlife Refuge, Management Plan, Due: Dec. 7, 1984, Contact: William Knauer (907) 786-3399.

EIS No. 840443, Draft, BLM, ID, NV, Jarbidge Resources Area, Resource Management Plan, Due: Jan. 4, 1985, Contact: Ted Milesnick (208) 334-1582.

EIS No. 840444, Draft, NOAA, AL, Weeks Bay National Estuarine Sanctuary, Designation, Baldwin County, Due: Nov. 19, 1984, Contact: Dr. Nancy Foster (202) 634-4236.

EIS No. 840445, Draft, AFS, GA, Chattahoochee-Oconee National Forests, Land and Resource Management Plan, Due: Feb. 1, 1985, Contact: W. Pat Thomas (404) 536-0541.

EIS No. 840446, Draft, AFS, WA, Mount St. Helens National Volcanic Monument, Comprehensive Management Plan, Gifford Pinchot National Forest, Due: Dec. 5, 1984, Contact: Ed Osmond (206) 696-7524.

EIS No. 840447, Draft, SCS, MD, Goldsboro Watershed Multipurpose Plan, Caroline County, Due: Nov. 19, 1984, Contact: Gerald Calhoun (301) 344-4180.

EIS No. 840448, Draft, USN, CA, Port Chicago Highway, Main Street and Waterfront Road, Explosive Safety Closure, Naval Weapons Station, Contra Costa County, Due: Nov. 19, 1984, Contact: Dana Sakamoto (415) 877-7573.

EIS No. 840449, Final, AFS, CA, GU, HI, TT, Pacific Southwest Region Management Standards, Guidelines and Planning Goals, Due: Nov. 5, 1984, Contact: Jon Kennedy, (415) 556-3379.

EIS No. 840450, Final, COE, Co, Getty and Cities Service Shale Oil Projects,

Construction/Operation, Permit, Garfield County, Due: Nov. 5, 1984, Contact: Arthur Williams (916) 440-2541.

Dated: October 2, 1984.

Allan Hirsch,  
Director, Office of Federal Activities.

[FR Doc. 84-26530 Filed 10-4-84; 8:45 am]

BILLING CODE 6560-50-M

**[OPTS-51539; TSH-FRL 2686-4]****Certain Chemicals; Premanufacture Notices**

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

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-five PMNs and provides a summary of each.

**DATES:** Close of Review Period:

PMN 84-1205, 84-1206 and 84-1207, December 19, 1984

PMN 84-1208, 84-1209, 84-1210, 84-1211, 84-1212, 84-1213, 84-1214, 84-1215, 84-1216, 84-1217 and 84-1218, December 23, 1984

PMN 84-1219, December 24, 1984

PMN 84-1220, 84-1221, 84-1222, 84-1223, 84-1224, 84-1225, 84-1226, 84-1227, 84-1228 and 84-1229, December 25, 1984

Written comments by:

PMN 84-1205, 84-1206 and 84-1207, November 19, 1984

PMN 84-1208, 84-1209, 84-1210, 84-1211, 84-1212, 84-1213, 84-1214, 84-1215, 84-1216, 84-1217 and 84-1218, November 23, 1984

PMN 84-1219, November 24, 1984

PMN 84-1220, 84-1221, 84-1222, 84-1223, 84-1224, 84-1225, 84-1226, 84-1227, 84-1228 and 84-1229, November 25, 1984.

**ADDRESS:** Written comments, identified by the document control number "[OPTS-51539]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460 (202-382-3532).

**FOR FURTHER INFORMATION CONTACT:** Wendy Cleland-Hamnett.

Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460 (202-382-3729).

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

**PMN 84-1205**

*Manufacturer.* American Hoechst Corporation.

*Chemical.* (S) Benzeneamine, 2-hydroxy-5-((2-sulfoxyethyl) sulfonyl)-.

*Use/Production.* (S) Dye intermediate. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: Dermal, a total of 3 workers, up to 2 hrs/da, up to 8 da/yr.

*Environmental Release/Disposal.* No release.

**PMN 84-1206**

*Importer.* American Hoechst Corporation.

*Chemical.* (S) Benzenemethanamine, 3-methoxy-.

*Use/Import.* (G) Open, non-dispersive. Import range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Use: Dermal, up to 4-6 persons/shift, up to 500 manhours/yr.

*Environmental Release/Disposal.* No release.

**PMN 84-1207**

*Manufacturer.* Dresser Industries, Inc.

*Chemical.* (G) Titanium zirconium lignosulfonate.

*Use/Production.* (G) Oil well drilling fluid additive. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: Inhalation, a total of 1 worker, up to 4 hr/da, up to 12 da/yr.

*Environmental Release/Disposal.* 0 to 250 lbs/yr released to dust.

**PMN 84-1208**

*Manufacturer.* Confidential.

*Chemical.* (G) Copolymer from poly(alkylene carbomonocyclic dicarboxylate) and disubstituted carbomonocycle.

*Use/Production.* (G) Processing aid, coating and formed articles. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: Dermal.

*Environmental Release/Disposal.* 5 kg/day incinerated.

**PMN 84-1209**

*Manufacturer.* Confidential.

*Chemical.* (S) Polymer of hydroxy ethyl acrylate, Desmodure W, Duracarb 140-600 and glycerine.

*Use/Production.* (G) Used in a closed system. Prod. range: 9,000-15,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: dermal, a total of 6 workers, up to 1 hr/da.

*Environmental Release/Disposal.* Minimal release to air. Disposal by licensed landfill.

**PMN 84-1210**

*Manufacturer.* Confidential.

*Chemical.* (S) Polymer of maleic anhydride and jeffamine M-600.

*Use/Production.* (G) Used in a closed system. Prod. range: 700-1,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: Dermal, a total of 6 workers, up to 1 hr/da.

*Environmental Release/Disposal.* Minimal release to air. Disposal by licensed landfill.

**PMN 84-1211**

*Manufacturer.* Confidential.

*Chemical.* (G) Reaction product of alkyldiamine and excess formaldehyde.

*Use/Production.* (S) Site-limited chemical intermediate. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* No exposure.

*Environmental Release/Disposal.* No release.

**PMN 84-1212**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyl diamino polyacetonitrile.

*Use/Production.* (S) Site-limited chemical intermediate. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: Dermal.

*Environmental Release/Disposal.* 60 kg/batch released. Disposal by on-site fluid bed incinerator.

**PMN 84-1213**

*Manufacturer.* Confidential.

*Chemical.* (G) Sodium salt of alkyldiaminopolycarboxylic acid.

*Use/Production.* (S) Site-limited chemical intermediate. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: Dermal, a total of 3 workers, up to 1 hr/da.

*Environmental Release/Disposal.* No release.

**PMN 84-1214**

*Manufacturer.* Confidential.

*Chemical.* (G) Acrylic copolymer.

*Use/Production.* (S) Acrylic copolymer converted to paint. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**PMN 84-1215**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyd copolymer.

*Use/Production.* (S) Copolymer is converted into paint. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**PMN 84-1216**

*Manufacturer.* Confidential.

*Chemical.* (G) Acrylic copolymer.

*Use/Production.* (S) Resins are formulated into paints. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**PMN 84-1217**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkyd base for an alkyd modified acrylic copolymer.

*Use/Production.* (G) Base is used in finished product, never leaves plant. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**PMN 84-1218**

*Manufacturer.* Lawter International Inc.

*Chemical.* (G) Polymer of aliphatic diamine and unsubstituted aromatic and aliphatic acids.

*Use/Production.* (S) Industrial resin for flexographic printing inks. Prod. range: 30,000-60,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: Dermal, a total of 5 workers, up to 3 hrs/da, up to 12 da/yr.

*Environmental Release/Disposal.* 2 released to air. Disposal by navigable waterway.

**PMN 84-1219**

*Manufacturer.* The Dow Chemical Company.

*Chemical.* (G) Substituted pyridine.

*Use/Production.* (G) Contained use. Prod. range: Confidential.

*Toxicity Data.* Actue oral: Between 250 and 500 mg/kg; Acute dermal: Between 500 and 1,000 mg/kg; Irritation:

Skin—Nonirritant; Eye—Slight;  
Inhalation: High vapor pressure: LC<sub>50</sub> 48  
hr (Daphnia Magna): 45 MG/l; LC<sub>50</sub> 96 hr  
(Fathead Minnow): 9.7 MG/l.  
*Exposure.* Confidential.  
*Environmental Release/Disposal.*  
Release to air and land. Disposal by  
navigable waterway after waste  
treatment and incineration.

## PMN 84-1220

*Manufacturer.* Confidential.  
*Chemical.* (G) Disubstituted  
piperazine.  
*Use/Production.* (G) Chemical  
intermediate. Prod. range: 0.2 kg/yr.  
*Toxicity Data.* No data submitted.  
*Exposure.* Manufacture and use:  
Dermal, a total of 3 workers, up 0.3 hrs/  
da, up to 2 da/yr.  
*Environmental Release/Disposal.* No  
release. Less than 0.01 kg/batch  
incinerated.

## PMN 84-1221

*Manufacturer.* Confidential.  
*Chemical.* (G) Disubstituted  
benzothiazole salt.  
*Use/Production.* (G) Contained use in  
commercial products. Prod. range: 0.15  
kg/yr.  
*Toxicity Data.* No data submitted.  
*Exposure.* Manufacture and  
processing: Dermal and inhalation, a  
total of 8 workers, up to 0.4 hr/da, up to  
5 da/yr.  
*Environmental Release/Disposal.* 0 to  
0.001 kg/batch released to water. 0.001  
kg/bath disposed of by biological  
treatment and less than 0.01 kg/batch  
incinerated.

## PMN 84-1222

*Manufacturer.* Confidential.  
*Chemical.* (G) Polymer of substituted  
methacrylic acid and  
polydimethylsiloxane.  
*Use/Production.* (G) Product finish  
coating for open, nondispersive use.  
Prod. range: Confidential.  
*Toxicity Data.* No data submitted.  
*Exposure.* Confidential.  
*Environmental Release/Disposal.*  
Confidential.

## PMN 84-1223

*Manufacturer.* The C.P. Hall  
Company.  
*Chemical.* (G) Aliphatic ester.  
*Use/Production.* (S) Industrial  
lubricant. Prod. range: Confidential.  
*Toxicity Data.* No data submitted.  
*Exposure.* Confidential.  
*Environmental Release/Disposal.*  
Confidential.

## PMN 84-1224

*Manufacturer.* The C.P. Hall  
Company.  
*Chemical.* (G) Aliphatic polyester.  
*Use/Production.* (S) Industrial  
plasticizer. Prod. range: Confidential.  
*Toxicity Data.* No data submitted.  
*Exposure.* Confidential.  
*Environmental Release/Disposal.*  
Confidential.

## PMN 84-1225

*Manufacturer.* The C.P. Hall  
Company.  
*Chemical.* (G) Aliphatic polyester.  
*Use/Production.* (S) Industrial  
plasticizer. Prod. range: Confidential.  
*Toxicity Data.* No data submitted.  
*Exposure.* Confidential.  
*Environmental Release/Disposal.*  
Confidential.

## PMN 84-1226

*Manufacturer.* Allied Corporation.  
*Chemical.* (G) Substituted amine-  
boron compound.  
*Use/Production.* (G) Destructive use.  
Prod. range: Confidential.  
*Toxicity Data.* Acute oral: Between 3  
and 10 ml/kg; Irritation: Skin-Corrosive.  
*Exposure.* Manufacture: A total of 1  
worker.  
*Environmental Release/Disposal.*  
Confidential.

## PMN 84-1227

*Manufacturer.* Ethyl Corporation.  
*Chemical.* (G) Halogenated aromatic  
substituted alkane.  
*Use/Production.* (S) Site-limited  
intermediate in process to produce a  
reactive flame retardant co-monomer.  
Prod. range: Confidential.  
*Toxicity Data.* No data submitted.  
*Exposure.* Confidential.  
*Environmental Release/Disposal.*  
Confidential. Disposal by company  
owned brine wells.

## PMN 84-1228

*Manufacturer.* Confidential  
*Chemical.* (G) Polyisoalkoxyalkanol.  
*Use/Production.* (G) Solvent. Prod.  
range: Confidential.  
*Toxicity Data.* LC<sub>50</sub> 96 hr (Fathead  
minnow): 3,200 mg/l.  
*Exposure.* Manufacture: A total of 3  
workers.  
*Environmental Release/Disposal.*  
Release to air. Disposal by incineration.

## PMN 84-1229

*Manufacturer.* Confidential.  
*Chemical.* (G) Polyisoalkoxyalkanol.  
*Use/Production.* (G) Solvent. Prod.  
range: Confidential.

*Toxicity Data.* LC<sub>50</sub> 96 hr (Fathead  
minnow): 4,700 mg/l.

*Exposure.* Manufacture: A total of 3  
workers.

*Environmental Release/Disposal.*  
Release to air. Disposal by incineration.

Dated: October 1, 1984.

Linda A. Travers,

Acting Director, Information Management  
Division.

[FR Doc. 84-26484 Filed 10-4-84; 8:45 am]

BILLING CODE 6560-50-M

## [OMS-FRL-2686-7]

**Fuels and Fuel Additives; Waiver  
Application**

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

**ACTION:** Notice.

**SUMMARY:** On March 14, 1984, counsel  
for Ethanol Plus, Ltd. submitted an  
application for a waiver of the  
prohibition on introduction into  
commerce of certain fuels and fuel  
additives set forth in section 211(f) of  
the Clean Air Act ("Act"). EPA  
published notice of the application and  
solicited comments on it at 49 FR 18171  
(Apr. 27, 1984). Counsel for Ethanol Plus,  
Ltd. withdrew the application on  
September 7, 1984. The Administrator of  
EPA has therefore terminated  
consideration of the application without  
making a determination on the  
application.

**ADDRESS:** Copies of information relative  
to this application are available for  
inspection in public docket EN-84-01 at  
the Central Docket Section (LE-131) of  
the EPA, Gallery I—West Tower, 401 M  
Street, SW., Washington, D.C. 20460,  
(202) 382-7548, between the hours of 8:00  
a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:**  
Alan P. Loeb, Attorney-Advisor, Field  
Operations and Support Division (EN-  
397), U.S. Environmental Protection  
Agency, 401 M Street, SW., Washington,  
D.C. 20460, (202) 382-2655.

**SUPPLEMENTARY INFORMATION:** Section  
211(f)(1) of the Act makes it unlawful,  
effective March 31, 1977, for any  
manufacturer of a fuel or fuel additive to  
first introduce into commerce, or to  
increase the concentration in use of, any  
fuel or fuel additive for use in light duty  
motor vehicles manufactured after  
model year 1974 which is not  
substantially similar to any fuel or fuel  
additive utilized in the certification of  
any model year 1975, or subsequent  
model year, vehicle or engine under  
section 206 of the Act. EPA has defined

"substantially similar" at 46 FR 38528 (July 28, 1981).

The application submitted by Ethanol Plus, Ltd. sought a waiver for a fuel additive containing anhydrous ethanol, isopropanol and a metal deactivator, to be blended with unleaded gasoline at up to 10% additive per gallon of unleaded gasoline. The Act allowed the Administrator of EPA until September 10, 1984 (180 days from the date of receipt of the application) to grant or deny this application.

Counsel for Ethanol Plus, Ltd. withdrew the application in a letter to the Administrator of EPA on September 7, 1984. Because this date falls within the time allowed for the Administrator to make a determination on the application, and because no determination had been made at the time the applicant withdrew the application, EPA accepted the withdrawal and immediately terminated this proceeding without action on the application.

Dated: September 27, 1984.

John C. Topping, Jr.,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 84-26480 Filed 10-4-84; 8:45 am]

BILLING CODE 6560-50-M

[FRL No. 2688-4]

#### Nonconformance Penalty Negotiated Rulemaking Advisory Committee; Meeting

As required by the Federal Advisory Committee Act (Pub. L. 94-463), we are giving notice of the next meeting of the Nonconformance Penalty Negotiated Rulemaking Advisory Committee.

It will be held in Washington, D.C., on Friday, October 12th, from 9:00 a.m. until resolution of the outstanding issues, at the offices of the American Trucking Association (ATA) located at 430 First Street SE., third floor. The purpose of the meeting is to attempt to reach consensus on the issues involved in establishing nonconformance penalties.

If interested in attending or receiving more information, please contact Chris Kirtz at (202) 382-7565.

This notice is late. The reason for the late notice is administrative oversight.

Dated: October 3, 1984.

Milton Russell,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 84-26540 Filed 10-4-84; 8:45 am]

BILLING CODE 6560-50-M

#### FEDERAL COMMUNICATIONS COMMISSION

##### New TV Station; Community Educational Television Inc. and Diocese of Fresno Education Corp.; Hearing Designation Order

[MM Docket Nos. 84-911, 84-912; File Nos. BPET-840427KQ, BPET-840629KN]

In the matter of applications of Community Educational Television Inc. (MM Docket No. 84-911, File No. BPET-840427KQ), Diocese of Fresno Education Corp. (MM Docket No. BPET-840629KN), for construction permit, Visalia, CA.

Adopted: September 26, 1984.

Released: September 28, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Community Educational Television Incorporated (CET), and Diocese of Fresno Education Corporation (Diocese) for authority to construct a new noncommercial educational television station on Channel 49\*, Visalia, California.

2. Applicants for new broadcast stations are required to give local notice of the filing of their applications, in accordance with § 73.3580 of the Commission's Rules. They must then file proof of publication of such notice or certify that they have or will comply with the public notice requirement. We have no evidence that either CET or Diocese has published the required notice. Each applicant will, therefore, be required to file with the presiding Administrative Law Judge a certification of compliance with § 73.3580 within 120 days after the release of this Order.

3. No determination has been made that the tower height and location proposed by CET<sup>1</sup> would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

4. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. CET has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after this Order is released.

<sup>1</sup>The Commission is not in receipt of FAA's determination for the tower proposed by CET.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Community Educational Television Incorporated would constitute a hazard to air navigation.

2. To determine the extent to which each applicant's proposed operation will be integrated into the overall cultural and educational objectives of the respective applicants;

3. To determine the manner in which each applicant's proposed operation meets the needs of the community to be served;

4. To determine whether the factors in the record demonstrate that one applicant will provide a superior non-commercial educational broadcast service.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that Community Educational Television Incorporated and Diocese of Fresno Education Corporation shall each file a certification with the presiding Administrative Law Judge that it has or will publish local notice of the filing of its application, within 20 days after the date of release of this Order.

8. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

9. It is further ordered, that Community Educational Television Incorporated shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy to TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

10. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondents herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

11. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Video Services Division, Mass Media Bureau.

[FR Doc. 84-26448 Filed 10-4-84; 8:45 am]

BILLING CODE 6712-01-M

[File No. BPCT-840103KF, et al.]

#### New TV Stations; Lake Worth Communications, et al; Hearing Designation Order

In the matter of applications of Dan Mahoney (File No. BPCT-840103KF), Lake Worth Communications (MM Docket No. 84-907, File No. BPCT-840306KJ), Minority Television of Lake Worth, Inc. (MM Docket No. 84-908, File No. BPCT-840209KF), Lake Worth Broadcasting Corporation (MM Docket No. 84-909, File No. BPCT-840306KF), Hispanic Broadcasting, Inc. (MM Docket No. 84-910, File No. BPCT-840306KE), For construction permit for new TV Station, Lake Worth, Florida.

Adopted: September 26, 1984.

Released: September 28, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it: (1) The above-captioned mutually exclusive applications of Dan Mahoney (Mahoney), Minority Television of Lake Worth, Inc. (Minority), Lake Worth Broadcasting Corp. (LWBC), Hispanic Broadcasting, Inc. (Hispanic), and Lake Worth Communications (LWC)<sup>1</sup> for authority to construct a new commercial television station on Channel 67, Lake Worth, Florida; (2) petitions to deny the Mahoney and LWBC applications, filed by Malrite of Florida, Inc. (Malrite),

licensee of Station WFLX-TV, West Palm Beach, Florida; and (3) informal objections to the Mahoney and LWC applications, filed by the Association of Maximum Service Telecasters, Inc. (AMST).

2. On March 5, 1984, Malrite filed a petition to deny Mahoney's application and on June 4, 1984, LWBC's application. Malrite's petition against LWBC alleged that LWBC had no reasonable assurance of the availability of its proposed site. On June 15, 1984, Malrite filed a letter withdrawing its petition against LWBC. LWBC had amended its application on March 29, 1984, to propose a different site. Malrite's petition against Mahoney alleged that Mahoney had no reasonable assurance of the availability of his proposed site, was not financially qualified, was short-spaced to another allocation, his engineering was defective, and that Mahoney did not file an EEO statement. By letter dated September 20, 1984, Mahoney requested that his application be dismissed. In view of the foregoing, Mahoney's application will be dismissed, and Malrite's petitions will be dismissed as moot.

3. *AMST Objections.* On March 6, 1984, AMST filed an informal objection to the application of Mahoney, and on June 4, 1984, to LWC's application, on the grounds that both proposed sites are short-spaced to the reference point for Channel 63, Boca Raton, and to the site proposed by each of the three applicants for that channel. LWC filed an amendment on September 18, 1984, changing its antenna site to a location which meets Commission's minimum mileage separation requirements. Mahoney's application will be dismissed in accordance with his request. Therefore, the objections filed by AMST against LWC and Mahoney will be dismissed as moot.

4. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. LWBC has not supplied this data, and the information submitted by Hispanic is tabulated every 15°. Accordingly, each of these applicants will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

5. No determination has been made that the tower heights and locations proposed by the applicants would not

constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that the application of Dan Mahoney is dismissed.

8. It is further ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications of Minority, LWBC, LWC, and Hispanic, are designated for hearing in a consolidated proceeding before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by each of the applicants would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further Ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

10. It is further ordered, that the objections to the Mahoney and Lake Worth Communications applications, filed by AMST, are dismissed, as moot.

11. It is further ordered, that the petition to deny the applications of Mahoney and LWBC, filed by Malrite, are dismissed.

12. It is further ordered, that the petition for leave to amend, filed by LWBC, is dismissed, as moot.

13. It is further ordered, that LWBC and Hispanic shall each submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days of the date of the release of this Order.

14. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in

<sup>1</sup> On September 18, 1984, LWC petitioned for leave to amend to change its transmitter site. Since the amendment was filed in response to the Commission's request, the petition was unnecessary and will be dismissed as moot.

person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

15. It is further ordered, that the applicants herein shall, pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communication Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-26450 Filed 10-4-84; 6:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-899, et al.; File Nos. BPH-8131025AA, et al.]

#### New FM Stations; Applications for Consolidated Hearing; Peter Edward Hunn, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM stations:

Applicant, city, and State	File No.	MM Docket No.
A. Peter Edward Hunn; Saranac Lake, NY.	BPH-831025AA.....	84-899
B. DGR Communications, Inc.; Saranac Lake, NY.	BPH-840217AG.....	84-900
C. Michelle Walker and Ronald Baptist, d/b/a Tree-Eater Communications, Ltd.; Saranac Lake, NY.	BPH-840217AM.....	84-901

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

#### Issue Heading and Applicant(s)

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-26451 Filed 10-4-84; 6:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-913, et al.; File Nos. BPCT-840514KG, et al.]

#### New TV Stations; San Joseph Broadcasting, Inc., et al.; Hearing Designation Order

In the matter of applications of San Joseph Broadcasting, Inc. (MM Docket No. 84-913, File No. BPCT-840514KG), Morro Rock Resources, Inc. (MM Docket No. 84-914, File No. BPCT-840618KG), Skagit Valley Publishing Co. (MM Docket No. 84-915, File No. BPCT-840710KE), for construction permit for new TV Station, Provo, Utah.

Adopted: September 26, 1984.

Released: September 28, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of San Joseph Broadcasting, Inc. (San Joseph),<sup>1</sup> Morro Rock Resources, Inc. (Morro Rock), and Skagit Valley Publishing Co. (Skagit) for authority to construct a new commercial television station on Channel 16, Provo, Utah.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would be served by each. Consequently, the areas and populations which would receive television service of 64 dBu (Grade B) or greater intensity, together with the availability of other Grade B

<sup>1</sup> August 30, 1984, was the "cut-off" date ("B" date) for the filing of minor amendments as of right. By amendment dated August 31, 1984, San Joseph sought to amend its application to supply a missing signature and accompanied its amendment by a petition for leave to amend in the apparent belief that the amendment was late-filed. On September 13, 1984, Morro Rock filed an opposition to the petition for leave to amend. In fact, however, the amendment bears the stamp of the Commission's Secretary showing that it was filed on August 30, 1984. Consequently, it was timely filed and both pleadings will, therefore, be dismissed as moot.

television services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. San Joseph proposes to use a directional antenna. Section 73.685(e) of the Commission's Rules limits the maximum-to-minimum ratio of a UHF directional antenna to 15 dB. San Joseph proposes a directional antenna with maximum-to-minimum ratio of 18 dB, but no waiver has been requested. Accordingly, an issue regarding this matter will be specified.

4. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. San Joseph has not supplied this data. Accordingly, San Joseph will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

5. No determination has been made that the tower height and location proposed by Skagit would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to San Joseph whether circumstances exist which would warrant a waiver of § 73.685(e) of the Commission's Rules.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by Skagit would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best served the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that San Joseph shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy to TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

9. It is further ordered, that the pleadings filed herein by San Joseph and Morro Rock are dismissed as moot.

10. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to Issue 2.

11. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 84-26449 Filed 10-4-84; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0011

### Title: FEMA Summer Shelter Survey Employment Questionnaire Abstract:

Form is used to get pertinent information i.e., phone numbers, Veteran's preference status and their choice of areas for employment in the shelter survey program. Upon receipt of the completed questionnaire selections are made on the basis of the information supplied and the final examination score received on the SST course.

Type of respondents: Individuals or Households, State or Local Governments, Federal Agencies or Employees, Small Businesses or Organizations

Number of respondents: 1,000

Burden hours: 110

Copies of the above information collection clearance package can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287-9906, FEMA Reports Clearance Officer, 500 C. St., SW., Washington, D.C. 20472.

Written comments and recommendations for the proposed information collection package should be sent to Linda Shildy, FEMA Reports Officer, and to Mike Weinstein, Desk Officer, OMB Reports Management Branch, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: October 1, 1984.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 84-26438 Filed 10-4-84; 8:45 am]

BILLING CODE 6718-01-M

[Docket No.: FEMA-REP-1-CT-1]

### The Connecticut State and Local Emergency Preparedness Plans Site- Specific for the Haddam Neck Nuclear Power Station; Certification of FEMA Findings and Determination

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of Connecticut submitted its plans relating to the Haddam Neck Nuclear Power Station to the Director of FEMA Region I on September 4, 1981, for FEMA review and approval. On September 28, 1983, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the Haddam Neck facility; an evaluation of the joint exercises conducted on February 6, 1982, April 23, 1983, and May 12, 1984, in

accordance with § 350.9 of the FEMA rule; and a public meeting held on May 5, 1982, to discuss the site-specific aspects of the State and local plans around the Haddam Neck Nuclear Power Station in accordance with § 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that, subject to the condition stated below, the State and local plans and preparedness for the Haddam Neck Nuclear Power Station are adequate to protect the health and safety of the public living in the vicinity of the plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The condition for the above approval is that the adequacy of the public alert and notification system already installed and operational must be verified as meeting the standards set forth in Appendix 3 of the Nuclear Regulatory Commission/FEMA criteria of NUREG-0654/FEMA-REP-1, Revision 1.

FEMA will continue to review the status of offsite plans and preparedness associated with the Haddam Neck Nuclear Power Station in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA-REP-1-CT-1 maintained by the Regional Director, FEMA Region I, J.W. McCormack Post Office and Courthouse Building, Room 442, Boston, Massachusetts 02109.

Dated: October 1, 1984.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 84-26439 Filed 10-4-84; 8:45 am]

BILLING CODE 6718-01-M

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

### Extension of Comment Period and Delay of Implementation Date; Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC Form 002)

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Notice of extension of public comment period and delay of implementation date.

**SUMMARY:** The FFIEC, in response to requests, is now formally extending for 51 days from September 10, 1984, the period for public comment on the proposed revision of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC Form 002). The end of the comment period will now be October 31, 1984. Earlier the comment period was informally extended from September 10, 1984 to September 30, 1984.

In conjunction with the extension of the public comment period, the FFIEC is also delaying the implementation date of the revised Report. The proposed implementation date is now June 30, 1985. Implementation of the report previously had been set for March 31, 1985.

The current reporting requirements for U.S. branches and agencies of foreign banks will remain in effect until the revision is implemented.

**DATE:** Comments should be received on or before October 31, 1984.

**ADDRESS:** Comments should be sent to Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, Eighth Floor, 490 L'Enfant Plaza, SW, Washington, DC 20219.

**FOR FURTHER INFORMATION CONTACT:** Stanley J. Sigel, Reports Task Force, Board of Governors of the Federal Reserve System, (202) 452-2696.

Dated: October 1, 1984.

Robert J. Lawrence,  
Executive Secretary, FFIEC.

[FR Doc. 84-26456 Filed 10-4-84; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL MARITIME COMMISSION

### Filing and Approval of Agreement

The Federal Maritime Commission hereby gives notice that on September 18, 1984, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed approved that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 201-002631-004.

Title: New Orleans Assessment Agreement.

Parties:

The New Orleans Steamship Association (NOSA)  
International Longshoremen's Association, AFL-CIO (ILA)

Synopsis: Agreement No. 201-002631-004 amends the basic agreement between the members of NOSA and the ILA to reflect the increased assessments

agreed to by NOSA to meet the current funding requirements of the Guaranteed Annual Income plan which has been established between NOSA and the ILA.

By Order of the Federal Maritime Commission.

Dated: October 2, 1984.

Francis C. Hurney,  
Secretary.

[FR Doc. 84-26455 Filed 10-4-84; 8:45 am]

BILLING CODE 6730-01-M

### Inactive Tariffs; Erratum

The following carriers are hereby withdrawn from the list of cancelled inactive tariffs published in the *Federal Register*, September 4, 1984 (*Federal Register* Notice—Vol. 49, No. 172, page 34960):

Caribbean Container Services, Inc.—FMC 1,  
National Shipping Co. of Saudi Arabia—FMC 4 and 5,  
First International Shipping Co.—FMC 1.

Caribbean Container Services, Inc., by letter dated May 10, 1984, notified the Bureau of Tariffs that its tariff is active and that service is currently being offered. Despite that notification and a follow-up letter received on September 7, 1984, confirming the active status of the tariff, the carrier's name was inadvertently included on the list of tariffs to be cancelled.

The National Shipping Co. of Saudi Arabia confirmed in letter of April 19, 1984, that service is contemplated in the future and requested that its tariffs be maintained in an active status. The carrier's name was inadvertently included on the list of tariffs to be cancelled.

First International Shipping Co. in a telephone conversation with a member of the Commission staff, requested that its tariff remain in an active status and that a confirming letter would be forthcoming. However, since the letter, dated August 21, 1984, failed to arrive until September 4, 1984, subsequent to the reply date specified in the *Federal Register* Notice, the tariff was included in the cancellation notice.

In view of the above, the freight tariffs of Caribbean Container Services, Inc., FMC 1, First International Shipping Co., FMC 1 and National Shipping Co. of Saudi Arabia, FMC 4 and 5 are deleted from the list of cancelled inactive tariffs as published in *Federal Register* Notice, Vol. 49, No. 172, page 34960. The notice of cancellation insofar as it applies to the foregoing tariffs is hereby rescinded.

Therefore, it is ordered, that the tariffs shown above be continued in an active status and the tariffs be retained in the Commission's active files.

It is further ordered, that this Order be published in the *Federal Register*.

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.

[FR Doc. 84-26454 Filed 10-4-84; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Consumer Advisory Council; Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Wednesday, October 24, Thursday, October 25, and Friday, October 26. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The October 24 session is expected to begin at 1:00 p.m. and to continue until 5:00 p.m. The October 25 session is expected to begin at 9:00 a.m. and to continue until 5:00 p.m., with a lunch break from 1:00 to 2:00 p.m. The October 26 session is expected to begin at 9:00 a.m. and to conclude at noon. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, D.C.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *Board's Regulation B—Equal Credit Opportunity.* Discussion of the Board's review of Regulation B under its Regulatory Improvement Project.

2. *Status Reports from the Council's Ad Hoc Committees.* Briefing by Council committees on their activities on:

- Service Charges and Lifeline Services.
- Emerging Technologies in the Financial Services Industry.
- Incentives for Institutions to Achieve Exemplary Performance under the Community Reinvestment Act.
- Integration of Electronic Fund Transfer/Truth in Lending Laws.
- Alternative Rate Mortgages and Variable Rate Lending.

3. *Board's Response to Issuance of the Federal Trade Commission's Credit Practices Rule.* Discussion of the FTC's Credit Practices Rule and whether the Board should adopt a substantially similar rule for banks.

4. *Public Policy on Credit Card Surcharges and Cash Discounts.* Discussion of legislative alternatives

and public policy governing the imposition of surcharges on credit card purchases and the provision of discounts for cash purchases.

**5. Regulatory and Enforcement Policies in Consumer Matters.**

Discussion of (1) how to achieve greater uniformity among the federal regulatory agencies in setting and enforcing consumer financial protection policies; and (2) how to better coordinate federal efforts with state regulatory agencies.

**6. Truth in Savings.** Discussion of the question whether there is a need for federal truth in savings legislation in light of recent deregulatory actions regarding savings instruments.

**7. Regulatory Update.** Status of recent Board regulatory actions in the area of consumer financial services.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comment must be received no later than close of business Friday, October 19, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Mr. Joseph R. Coyne, Assistant to the Board, at (202) 452-3204.

Board of Governors of the Federal Reserve System, October 1, 1984.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 84-26443 Filed 10-4-84; 8:45 am]

BILLING CODE 6210-01-M

**Saver's 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 section 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 October 25, 1984.

**Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Saver's Bancorp, Inc.*, Littleton, New Hampshire; to acquire 51 percent of the voting shares of Belknap Bank & Trust, Belmont, New Hampshire.

**Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Southwest Arkansas Bancshares, Inc.*, Lockesburg, Arkansas; to become a bank holding company by acquiring 88 percent of the voting shares of Bank of Lockesburg, Lockesburg, Arkansas.

**Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Mid Continent Bancshares, Inc.*, Blue Springs, Missouri; to become a bank holding company by acquiring 94 percent of the voting shares of Ray County Bank, Richmond, Missouri, and 89 percent of the voting shares of Bank of Jacomo, Blue Springs, Missouri.

**Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Austin Colony, Inc.*, Lake Jackson, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National bank of Lake Jackson, Lake Jackson, Texas.

2. *Stone Oak Bankshares, Inc.*, San Antonio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Stone Oak National Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, October 1, 1984.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 84-26444 Filed 10-4-84; 8:45 am]

BILLING CODE 6210-01-M

**American Bancshares, Inc.; Formation of; Acquisition by; or Merger of Bank Holding Companies**

The company listed in this notice has applied for the Board's approval under

section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (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 application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than October 12, 1984.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *American Bancshares, Inc.*, Cookeville, Tennessee; to acquire at least 80 percent of the voting shares of Peoples Bank of Crossville, Crossville, Tennessee.

Board of Governors of the Federal Reserve System, October 4, 1984.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 84-26678 Filed 10-4-84; 10:47 am]

BILLING CODE 6210-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**Agency Forms Submitted to the Office of Management and Budget for Clearance**

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 28.

**Public Health Service***National Institutes of Health; National Heart Lung and Blood Institute*

Subject: Longitudinal Study of Coronary Heart Disease Risk Factors in Young Adults (CARDIA)—New  
Respondents: Individuals

*Centers for Disease Control*

Subject: Risk Factors for Lower Respiratory Tract Illness in Children of Day Care Center Age—New  
Respondents: Individuals  
Subject: Survey of Areas Colored or Restricted Because of Toxic Substance Contamination—New  
Respondents: States

*Office of the Assistant Secretary for Health*

Subject: Inventory/Assessment of Public and Professional Education Courses and Information Related to Disaster Medical Response (Request for Concept Clearance)—New  
Respondents: State/local governments; non-profit institutions

*Health Resources and Services Administration*

Subject: Application Guidelines for Designation and Grant Award and Reporting Systems for SHPDAs (0915-0058)—Extension No Change  
Respondents: State/local governments  
OMB Desk Officer: Fay S. Iudicello

*Health Care Financing Administration*

Subject: Ambulatory Surgical Center Request for Certification, The Ambulatory Surgical Center Survey Report Form and Paperwork Requirements in 42 CFR 416.43 and 416.47 (0938-0266) (HCFA-377 and HCFA)—Extension  
Respondents: Ambulatory Surgical Centers, State Survey Agencies  
OMB Desk Officer: Fay S. Iudicello

*Human Development Services:*

Subject: State Plan for Foster Care and Adoption Assistance (Title N-E) (0980-0141)—Reinstatement  
Respondents: States  
Subject: Child Welfare Services State Plan (0980-0142)—Reinstatement  
Respondents: States  
OMB Desk Officer: Robert J. Fishman  
*Office of the Secretary:*  
Subject: Evaluation of the Uses of the HHS/USDA Dietary Guidelines—New  
Respondents: Users of Dietary Guidelines  
OMB Desk Officer: Robert J. Fishman  
Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer).

Dated: September 28, 1984.  
Wallace O. Keene,  
*Acting Deputy Assistant Secretary for Management Analysis and Systems.*

[FR Doc. 84-20461 Filed 10-4-84; 8:45 am]  
BILLING CODE 4150-04-M

**Centers For Disease Control****Prospective Cohort and Industrial Hygiene Study of Mild Steel Welders; Open Meeting**

The following meeting 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:

Date: October 25, 1984.  
Time: 9 a.m.-12 noon.  
Place: Room 138, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Purpose: To discuss the research protocol for a 5-year prospective medical and industrial hygiene study of mild steel welders. 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 will also be entertained during the meeting.

Additional information may be obtained from: Paul Hewett, Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923-4421. Commercial: 304/291-4421.

Dated: October 1, 1984.  
William C. Watson Jr.,  
*Acting Director, Centers for Disease Control.*  
[FR Doc. 84-26406 Filed 10-4-84; 8:45 am]  
BILLING CODE 4160-19-M

**National Institutes of Health****Board of Scientific Counselors of the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases; Meeting**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Arthritis, Diabetes, and

Digestive and Kidney Diseases (NIADDK), October 11, 12, and 13, 1984. National Institutes of Health, Building 2, Room 102, Bethesda, Maryland 20205.

This meeting notice is being published later than the required time period because the majority of the members, as well as the Executive Secretary of the Board, are unable to attend the regularly scheduled November meeting.

This meeting will be open to the public from 8:00 p.m. to 10:10 p.m. on October 11, from 9:00 a.m. to 12:05 p.m. and from 2:05 p.m. to 4:24 p.m. on October 12, from 9:00 a.m. to 10:30 a.m. and October 13. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIADDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 7:30 p.m. to 8:00 p.m. on October 11, from 12:05 p.m. to 2:00 p.m. and 4:25 p.m. to adjournment on October 12, and from 10:30 a.m. to adjournment on October 13, for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIADDK, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, Building 31, Room 9A46, Bethesda, Maryland 20205. Further information concerning the meeting may be obtained by contacting the office of Dr. Jesse Roth, Executive Secretary, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N-222, Bethesda, Maryland 20205, (301) 496-4128.

Dated: October 2, 1984.  
Betty J. Beveridge,  
*NIH Committee Management Officer.*  
[FR Doc. 84-26560 Filed 10-4-84; 8:45 am]  
BILLING CODE 4140-01-M

**Public Health Service****National Toxicology Program Board of Scientific Counselors' Meeting**

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Toxicology Program (NTP)

Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, on November 2, 1984.

The meeting will be open to the public from 9:00 a.m. until adjournment. The primary agenda item is the completion of peer review on draft technical reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program. Reviews will be conducted by the Technical Reports Review Subcommittee of the Board in conjunction with an *ad hoc* Panel of Experts.

Draft technical reports on the following chemicals (listed alphabetically with Chemical Abstracts Service registry numbers, routes of administration, and NTP chemical managers for each study) are scheduled to be peer reviewed on November 2.

Since NTP policy requires that a data audit be performed with a summary of the audit report included in the appendix of the technical report prior to peer review, there is the possibility that not all of the technical reports listed below will be reviewed at this meeting.

Chemical (CAS Registry No.)	Route	Chemical manager (telephone No.)
Chlorinated Trisodium Phosphate (56802-99-4)	Gavage	Dr. C.E. Whitmire (919-541-2934)
3-Chloro-2-Methylpropene (563-47-3)	Gavage	Dr. P. Chan (919-541-7561)
Dimethyl Morpholino Phosphoramide (597-25-1)	Gavage	Dr. P. Chan (919-541-7561)
Isothorone (78-59-1)	Gavage	Dr. D. Bucher (919-541-4532)

In addition, a brief post data update will be presented to the Panel on the toxicology and carcinogenesis study of benzyl acetate (CAS No. 140-11-4). The technical report (TR# 250) was approved by the Panel on June 29, 1983.

A brief discussion will be held as to how best to bring up for peer review the reports on the data from the remaining long-term toxicology and carcinogenesis studies performed at Gulf South research Institute.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919-541-3971), FTS 629-3971, will furnish final agenda, rosters of subcommittee and panel members, and other program information prior to the meeting; and summary minutes subsequent to the meeting.

Dated: September 28, 1984.

David P. Rall, M.D., Ph.D.,

Director, National Toxicology Program.

[FR Doc. 84-26453 Filed 10-4-84; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-84-1435; FR-2002]

### Neighborhood Development Demonstration Program; Announcement of Fund Availability for Fiscal Year 1984; Revision

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of Fund Availability; revision.

**SUMMARY:** This document revises the application due date of October 15, 1984 stated in the original notice published in the *Federal Register* of Thursday, August 23, 1984 on page 33494 (49 FR 33494), to November 1, 1984.

**DATES:** Effective October 5, 1984.

Application due date: November 1, 1984.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Connie Southerland, Department of Housing and Urban Development, Washington, D.C., at (202) 755-5662.

**SUPPLEMENTARY INFORMATION:** This postponement of the application due date is necessary because the Department experienced unexpected delays in the preparation and printing of the Request for Grant Applications, and we want to assure that applicants have sufficient time to obtain and complete that form.

Dated: September 20, 1984.

DuBois L. Gilliam,

Acting General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 84-26506 Filed 10-4-84; 8:45 am]

BILLING CODE 4210-29-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Availability of the Final Environmental Impact Statement and Proposed Resource Management Plan for the Coast Valley Planning Area, Bakersfield District, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** Notice is hereby given of the availability of the Final Environmental Impact Statement/Proposed Resource Management Plan (EIS/RMP) for 517,000 acres of BLM-administered public land within the Coast/Valley Planning Area, encompassing Kern, Kings, San Luis Obispo, Santa Barbara, Tulare, and Ventura counties in California.

**SUPPLEMENTARY INFORMATION:** The issues addressed in the RMP are: (1) Land tenure adjustment; (2) livestock grazing; (3) minerals; (4) recreation use; (5) special land and resource use needs; and (6) water quality and watershed protection.

The Proposed Plan concerns multiple use management on 517,000 acres of public land in six Management Areas. This plan is a refinement of the proposed action presented in the Draft EIS/RMP published May, 1984. A total of 24 interested citizens, federal and state agencies, and private organizations submitted written comments on the Draft EIS/RMP.

The Proposed Plan represents a commitment to the protection of sensitive resources while allowing for multiple resource utilization and production. This proposal was developed as a result of: Public input and needs; other federal, state, county, and local land use plans; the planning goals as stated in the Draft EIS/RMP; and necessary consistency with current Bureau policy and guidelines.

1. Land Tenure Adjustment—Environmentally review approximately 43,920 acres for land tenure adjustment.
2. Livestock Grazing—Manage I (Improve) category allotments for 450 to 550 pounds of residual mulch on slopes of 0 to 50% depending on the allotment. Continue present authorization of 9,952 AUMs for M (Maintain) and C (Custodial) category allotments.

3. Minerals—Maintain 514,550 acres open to mineral leasing, location, and disposal (sales). Lease 3,020 acres with no surface occupancy and close to mineral location.

4. Recreation Use—Close 50 acres to ORV use. Develop walk-in access to Caliente Mountain.

5. Special Land and Resource Use Needs—Designate four ACECs and two Research Natural Areas. Nominate one National Natural Landmark.

6. Water Quality and Watershed Protection—Protect all existing water sources. No construction on slopes exceeding 70%.

Five alternatives are considered in addition to the Proposed Plan. They are: Emphasize Protection; Combined

Emphasis; Emphasize Production; Present Management (No Action); and the Proposed Action. The Final EIS/RMP includes a summary of the alternatives and the environmental consequences of each alternative as well as a detailed discussion of the Proposed Plan and the rationale for its selection.

Copies of the Final EIS/RMP are available for review at the following BLM offices, public libraries, and university/college libraries:

- U.S. Bureau of Land Management,  
Caliente Resource Area, 520 Butte St.,  
Bakersfield, CA 93305, (805) 861-4236
- U.S. Bureau of Land Management,  
Bakersfield District Office, 800  
Truxtun Ave., Rm. 311, Bakersfield,  
CA 93301, (805) 861-4191
- Avenal Branch Library, 501 E. Kings,  
Avenal, CA 93204, (209) 386-5741
- Beale Memorial Library, 1315 Truxtun  
Ave., Bakersfield, CA 93301, (805) 861-  
2135
- Foster E. P. Library, 651 E. Main,  
Ventura, CA 93001, (805) 648-2715
- San Luis Obispo County Library, 888  
Morro, San Luis Obispo, CA 93401,  
(805) 549-5991
- Santa Barbara Central Branch Library,  
1021 E. Anacapa, Santa Barbara, CA  
93101, (805) 962-7653
- Visalia County Library, 200 W. Oak St.,  
Visalia, CA 93291, (209) 733-8440
- Bakersfield College Library, 1801  
Panorama Dr., Bakersfield, CA 93305,  
(805) 395-4462
- California State-Bakersfield Library,  
9001 Stockdale Hwy., Bakersfield, CA  
93309, (805) 833-3172
- California State-Fresno Library, 5241 N.  
Maple Ave., Fresno, CA 93740, (209)  
294-2335
- California State-Northridge Library,  
Northridge, CA 91324, (213) 885-2285
- Cal. Polytechnic State Univ. Library, San  
Luis Obispo, CA 93401, (805) 546-2649
- Univ. of California-Berkeley Library,  
Berkeley, CA 94720, (415) 642-6657
- Univ. of California-Los Angeles Library,  
405 Hilgard Ave., W. Los Angeles, CA  
90024, (213) 825-1323
- Univ. of California-Santa Barbara  
Library, Santa Barbara, CA 93106,  
(805) 961-2311 or 961-2477.

**DATES:** All parts of this plan may be protested. Protests should be sent to the Director, Department of the Interior, Bureau of Land Management, 18th and C Streets, NW, Washington, D.C. 20240, prior to October 29, 1984 (the end of the 30-day protest period) and should include the following information.

- The name, mailing address, telephone number, and interest of the person filing the protest.
- A statement of the issue or issues being protested.

- A statement of the part or parts being protested.
- A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting or an indication of the date the issue or issues were discussed for the records.
- A short concise statement explaining why the BLM State Director's proposed decision (Proposed Plan) is wrong.

At the end of the 30-day protest period, a Record of Decision (ROD) will be developed outlining the approval process and the final resource management plan decisions excluding any portions of the plan under protest. Approval of those portions under protest will be withheld until final action has been completed on such protests. The ROD will be published in December, 1984.

**FOR FURTHER INFORMATION CONTACT:**  
Glen Carpenter, Area Manager, Bureau of Land Management, Caliente Resource Area, 520 Butte Street, Bakersfield, CA 93305, (805) 861-4236.

Dated: September 20, 1984.

**Rory Raschen,**

*Associate District Manager.*

[FR Doc. 84-23598 Filed 10-4-84; 8:45 am]

**BILLING CODE 4310-40-M**

#### **Availability of Draft Resource Management Plan and Environmental Impact Statement; Spokane District, Spokane, WA**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** Notice is hereby given of the availability of the Draft Environmental Impact Statement/Resource Management Plan for 307,603 acres of BLM administered lands within Spokane District encompassing all of the public lands in 19 counties of eastern Washington, except for 10,000 acres in Asotin County which are managed by the Baker Resource Area, Vale District, Baker, Oregon.

**SUPPLEMENTARY INFORMATION:** The issues and concerns addressed in the RMP are livestock grazing, land tenure adjustment, access, and recreation. The proposed action or preferred alternative concerns multiple-use management on 307,603 acres of BLM administered land in the 19 counties of eastern Washington. It would emphasize the management, production, and use of renewable resources on the majority of the public lands in the Spokane RMP area. Management would be directed

toward providing a flow of renewable resources from the public lands on a sustained yield basis. This alternative represents the Bureau's favored management approach.

Grazing leases would be authorized at the 1982 total preference level of 30,183 AUM's. There would be management systems developed, maintained, or revised for 16 I (improve) category allotments.

This alternative would develop AMPs and/or CRMPs for the I allotments to establish livestock use levels, grazing systems, seasons of use, and range improvements to accomplish multiple use objectives of livestock forage production, wildlife habitat, and watershed needs. CRMPs for the leased public land outside the I allotments would be developed. A moderate level of livestock use to maintain or protect other resource values would be emphasized. Authorized livestock use would initially remain at currently authorized levels for the 16 I category allotments but would be adjusted through collection and analyses of monitoring data to achieve 50% utilization of key forage species.

There would be 44,443 acres of commercial forestland on which the sustained harvest level is based. The sustainable harvest level would be approximately 3.98 MM bd. ft. annually or 39.8 MM bd. ft. for a ten year period. Minor forest products would be sold where consistent with other resource values.

There would be 8,720 acres identified for acquisition and approximately 300 acres per year identified for disposal. Exchanges and transfers to other Federal agencies would take place when natural resource values would benefit.

Three alternatives are considered in addition to the proposed action. They are: Maximize Protection, Maximize Production, and Present Management (No Action). A discussion of the affected environment is briefly summarized and the environmental consequences occurring from the Proposed Action and each alternative are documented in the EIS.

**FOR FURTHER INFORMATION CONTACT:**  
Joseph K. Buesing, District Manager,  
Spokane District, East 4217 Main  
Avenue, Spokane, Washington.

Copies of the DEIS are available for review at the following offices and libraries:

- U.S. Bureau of Land Management,  
Spokane District Office, East 4217  
Main Avenue, Spokane, Washington  
99202

U.S. Bureau of Land Management,  
Wenatchee Resource Area Office,  
1133 N. Western Avenue, Wenatchee,  
Washington 98801

U.S. Bureau of Land Management, Vale  
District Office, P.O. Box 700, Vale,  
Oregon 97918

U.S. Bureau of Land Management, Vale  
District, Baker Resource Area, P.O.  
Box 987, Baker, Oregon 97814

U.S. Bureau of Land Management, Coeur  
d'Alene District Office, 1808 N. Third  
Street, Coeur d'Alene, Idaho 83814

Eastern Washington University Library,  
Cheney, Washington 99004

Washington State Library, State Library  
Building, Olympia, Washington 98504

Spokane Public Library, Main Library,  
West 906 Main Avenue, Spokane,  
Washington 99202

A limited supply of copies of the RMP  
are available upon request to the  
Spokane District Manager.

**DATES:** Written comments concerning  
issues pertinent to the Spokane  
Resource Management Plan/  
Environmental Impact Statement will be  
accepted for 90 days following  
publication of this Notice of  
Availability.

No public meetings have been  
scheduled. However if the responses  
that are received from the public  
indicate a need for additional  
clarification of issues or other points  
brought out in the draft, meeting will be  
scheduled. Notification of time and  
place for these meetings will be made  
through the local news media.

Dated: September 30, 1984.

Joseph K. Buesing,  
District Manager.

[FR Doc. 84-26435 Filed 10-4-84; 8:45 am]

BILLING CODE 4310-33-M

#### National Park Service

##### Availability and Public Meeting Draft Land Protection Plan, Draft General Management Plan/Development Concept Plan and Environmental Assessment; Chaco Culture National Historical Park; NM

Pursuant to the National  
Environmental Policy Act of 1969, Title  
40 of the Code of Federal Regulations,  
Chapter 1 of Title 36 of the Code of  
Federal Regulations, the final  
interpretive rule for Preparation of Land  
Protection Plans printed in the *Federal  
Register* on May 11, 1983 (48 FR 21121),  
and section 506 of Pub. L. 96-550, the  
National Park Service has prepared a  
Draft Land Protection Plan, and Draft  
General Management Plan/  
Development Concept Plan and

Environmental Assessment for Chaco  
Culture National Historical Park,  
McKinley and San Juan Counties, New  
Mexico.

The Draft General Management Plan/  
Development Concept Plan and  
Environmental Assessment, which  
revises and updates the existing General  
Management Plan of 1979, outlines a  
proposal and alternative management  
strategies and assesses their impacts to  
insure all reasonable ways of achieving  
the intent of Congress and the  
management objectives of the recently  
enlarged Chaco Culture National  
Historical Park. The Draft Land  
Protection Plan identifies the means  
necessary to provide sufficient resource  
protection and provide for public use  
and enjoyment of Chaco's resources; to  
establish priorities for land protection;  
to provide for manageable resource  
areas through land protection strategies;  
and to provide a strategy and priority  
listing for the expenditure of acquisition  
funds.

Copies of the Draft Land Protection  
Plan, and Draft General Management  
Plan/Development Concept Plan and  
Environmental Assessment are  
available, while supplies last, from  
Chaco Culture National Historical Park,  
Star Route 4, Box 6500, Bloomfield, New  
Mexico 87413; and the National Park  
Service, Southwest Region, Post Office  
Box 728, Santa Fe, New Mexico 87501.

Reading copies of the documents are  
available at the following locations: In  
Albuquerque, New Mexico at the  
National Park Service's Division of  
Cultural Research, Southwest Cultural  
Resources Center, University of New  
Mexico; in Aztec, New Mexico at Aztec  
Ruins National Monument; in Santa Fe,  
New Mexico in the Public Affairs Office,  
National Park Service, Southwest  
Regional Office, 1100 Old Santa Fe Trail;  
and the Division of Planning and Design,  
Room 347, Pinon Building, 1220 South St.  
Francis Drive; in Bloomfield, New  
Mexico at Chaco Culture National  
Historical Park, Star Route 4, Box 6500;  
and in Farmington, New Mexico: at the  
Farmington Library, 302 North Orchard  
Avenue.

A Public Meeting is scheduled for  
November 1, 1984, at the Sheraton Old  
Town Hotel, 800 Rio Grande Boulevard,  
N.W., Albuquerque, New Mexico,  
beginning at 7:00 p.m.

Anyone wishing to provide comments  
on the draft plans for Chaco Culture  
National Historical Park are invited to  
ask questions or submit suggestions or  
revisions to the plans at the Public  
Meeting, or, provide written comments  
to the National Park Service, Southwest  
Region, Post Office Box 728, Santa Fe,

New Mexico 87501, by November 29,  
1984.

Dated: September 26, 1984.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 84-26474 Filed 10-4-84; 8:45 am]

BILLING CODE 4310-70-M

##### Availability Draft Land Protection Plan; El Morro National Monument; NM

Pursuant to the National  
Environmental Policy Act of 1969, Title  
40 of the Code of Federal Regulations,  
Chapter 1 of Title 36 of the Code of  
Federal Regulations, and the final  
interpretive rule for Preparation of Land  
Protection Plans printed in the *Federal  
Register* on May 11, 1983 (48 FR 21121),  
the National Park Service has prepared a  
Draft Land Protection Plan for El  
Morro National Monument, Cibola  
County, New Mexico.

The Draft Land Protection Plan  
addresses the protection of 238.80 acres  
within the authorized boundaries that  
have not been acquired. It considers  
alternate means of protection,  
establishes priorities, provides for public  
use and safety and identifies what land  
or interests in land need to be in Federal  
ownership in order to achieve  
management purposes consistent with  
the intent of the Presidential  
Proclamation and legislation authorizing  
the park.

Copies of the Draft Land Protection  
Plan are available from El Morro  
National Monument, Ramah, New  
Mexico 87321; and the Southwest  
Regional Office, National Park Service,  
Post Office Box 728, Santa Fe, New  
Mexico 87501, and will be sent upon  
request.

Anyone wishing to submit comments  
on the Draft Land Protection Plan should  
provide them to the Superintendent, El  
Morro National Monument, at the  
address provided above, within 30 days  
from the publication date of this notice.

Dated: September 24, 1984.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 84-26473 Filed 10-4-84; 8:45 am]

BILLING CODE 4310-70-M

##### Availability Draft Land Protection Plan; Carlsbad Caverns National Park; NM

Pursuant to the National  
Environmental Policy Act of 1969, Title  
40 of the Code of Federal Regulations,  
Chapter 1 of Title 36 of the Code of  
Federal Regulations, and the final  
interpretive rule for Preparation of Land  
Protection Plans printed in the *Federal*

Register on May 11, 1983 (48 FR 21121), the National Park Service has prepared a Draft Land Protection Plan for Carlsbad Caverns National Park, Eddy County, New Mexico.

The Draft Land Protection Plan addresses the protection of 320 acres within the established boundaries that have not been acquired. It considers alternate means of protection, provides for public use and safety and identifies what land or interests in land need to be in Federal ownership in order to achieve management purposes consistent with the intent of the Presidential Proclamation and legislation authorizing the park.

Copies of the Draft Land Protection Plan are available from Carlsbad Caverns/Guadalupe Mountains National Parks, 3225 National Parks Highway, Carlsbad, New Mexico, 88220; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Anyone wishing to submit comments on the Draft Land Protection Plan should provide them to the Superintendent, Carlsbad Caverns/Guadalupe Mountains National Parks, at the address provided above, within 30 days from the publication date of this notice.

Dated: September 24, 1984.

**Robert I. Kerr,**

*Regional Director, Southwest Region.*

[FR Doc. 84-26472 Filed 10-4-84; 8:45 am]

BILLING CODE 4310-70-M

#### **Martin Luther King, Jr., National Historic Site and Preservation District Advisory Commission; Meeting**

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. on Tuesday, October 23, 1984, at The Martin Luther King, Jr., Center for Non-Violent Social Change, Inc., Freedom Hall, Room 261, 449 Auburn Avenue, NE., Atlanta, Georgia 30312.

The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult with the Secretary of the Interior on matters of planning, development and administration of the Martin Luther King, Jr., National Historic Site. The purpose of this meeting will be to update the Commission on park planning and operations.

The members of the Advisory Commission are as follows:

Mr. William Allison, Chairman  
Mr. John H. Calhoun, Jr.  
Dr. Elizabeth A. Lyon  
Mr. C. Randy Humphrey  
Mrs. Christine King Farris  
Mr. Handy Johnson, Jr.  
Mr. James Patterson  
Mrs. Freddy Scarborough Henderson  
Mrs. Millicent Dobbs Jordan  
Mr. John W. Cox  
Reverend Joseph L. Roberts, Jr.  
Mrs. Coretta Scott King, Ex-Officio Member  
Director, National Park Service, Ex-Officio Member

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue, NE., Atlanta, Georgia 30312; Telephone 404/221-5190. Minutes of the meeting will be available approximately 4 weeks after the meeting.

Dated September 26, 1984.

**Robert M. Baker,**

*Regional Director, Southeast Region.*

[FR Doc. 84-26471 Filed 10-4-84; 8:45 am]

BILLING CODE 4310-05-M

#### **National Capital Region, Public Affairs; Public Meeting**

##### *Correction*

In FR Doc. 84-25260 appearing on page 37480 in the issue of Monday, September 24, 1984, make the following correction: In the third column, first line, "December 3" should have read "December 13".

BILLING CODE 1505-01-M

#### **INTERSTATE COMMERCE COMMISSION**

[Docket No. AB-52 (Sub-34X)]

#### **The Atchison, Topeka and Santa Fe Railway Co. and the Gulf and Inter-State Railway Co. of Texas; Abandonment and Discontinuance of Service in Chambers County, TX; Exemption**

The Atchison, Topeka and Santa Fe Railway Company (AT&SF) and the Gulf and Inter-State Railway Company of Texas, (G&I) filed a notice of exemption

under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*. The line involved is known as the Silsbee District of the Southern Division, extending from milepost 46.0 to milepost 49.0, a distance of 3.0 miles, near Stowell, in Chambers County, TX. AT&SF will discontinue service and G&I will abandon the line.

AT&SF and G&I have certified (1) that no local traffic has moved over the line for at least 2 years and that any overhead traffic on the line can be rerouted over other lines, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Texas has been notified in writing at least 10 days prior to the filing of the notice. See *Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on November 5, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by October 15, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 25, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to AT&SF and G&I's representative: Michael W. Blaszk, 80 East Jackson Boulevard, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 28, 1984.

By the Commission, Heber P. Hardy,  
Director, Office of Proceedings,

James H. Bayne,

Secretary.

[FR Doc. 84-26476 Filed 10-4-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub-35X)]

**The Atchison, Topeka & Santa Fe Railway Co.; Abandonment in Yavapai County, AZ; Exemption**

The Atchison, Topeka and Santa Fe Railway Company (AT&SF) filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*.

The line to be abandoned is a portion of line known as the Clarkdale District of the Albuquerque Division and extends from milepost 38.13 to milepost 38.57, a distance of 0.44 miles in Yavapai County, AZ.

AT&SF have certified (1) that no local traffic has moved over the line for at least 2 years, and that any overhead traffic on the line can be rerouted over other lines, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Arizona has been notified in writing at least 10 days prior to the filing of the notice. See *Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on November 5, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by October 15, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 25, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to Santa Fe's representative: Michael W. Blaszk, 80 East Jackson Boulevard, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 28, 1984.

By the Commission, Heber P. Hardy,  
Director, Office of Proceedings.

James H. Bayne,  
Secretary.

[FR Doc. 84-26477 Filed 10-4-84; 8:45 am]  
BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-206)]

**Burlington Northern Railroad Co.; Abandonment in Nemaha County, NE; Findings**

The Commission has found that the public convenience and necessity permit the Burlington Northern Railroad Company to abandon a 9.42 mile portion of its line of railroad between milepost 47.70 near Johnson, NE, and milepost 38.28, near Auburn, NE, all in Nemaha County, NE. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis E. Gitomer, no later than 10 days from publication of this Notice. Any offer previously made must be resubmitted within this 10-day period.

Information and procedures regarding financial assistance for continued rail services are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,  
Secretary.

[FR Doc. 84-26479 Filed 10-4-84; 8:45 am]  
BILLING CODE 7035-01-M

[Docket No. AB-26 (Sub-28X)]

**Southern Railway Co.; Abandonment Exemption in Troutman, NC; Exemption**

The Southern Railway Company filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*. The segment of line to be abandoned is between milepost 038.8 and milepost 039.0 + 372 feet, in Troutman, NC.

Southern certifies that (1) no local traffic has moved over the line for at least 2 years and overhead traffic is not moved over the line<sup>1</sup> and (2) no formal

<sup>1</sup> Southern indicates that no traffic has originated or terminated on this line segment for the past 20 years. This segment of track is not used to provide rail service. Its primary use is for switching, for which other arrangements have been made.

complaint filed by a user of rail service over the line (or by a State or local entity acting in behalf of such user) regarding cessation of service over the line is either pending with the Commission or has been decided in favor of the complaint within the 2-year period. The North Carolina utilities Commission has been notified in writing at least 10 days prior to the filing of this notice. See *Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment will be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on November 4, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by October 15, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 25, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Nancy S. Fleischman, Norfolk Southern Corporation, Suite 740, Washington, DC 20036.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if the exemption is conditioned upon environmental or public use conditions.

Decided: September 27, 1984.

By the Commission, Heber P. Hardy,  
Director, Office of Proceedings.

James H. Bayne,  
Secretary.

[FR Doc. 84-26475 Filed 10-4-84; 8:45 am]  
BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

## Office of the Attorney General

[Order No. 1070-84]

**President's Commission on Organized Crime; Meetings**

AGENCY: Department of Justice.

ACTION: Notice.

**SUMMARY:** This notice announces five forthcoming meetings of the President's Commission on Organized Crime. This notice also sets forth a summary of the agenda for the five meetings, together with an explanation of why the first two

meetings will be closed to the public. Notice of these meetings is required by the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a)(2).

**DATES:**

- October 22, 1984, 11:00 a.m. to 12:30 p.m. (closed meeting).  
 October 22, 1984, 2:00 p.m. to 5:00 p.m. (closed meeting).  
 October 23, 1984, 10:00 a.m. to 1:30 p.m. (public hearing).  
 October 24, 1984, 10:00 a.m. to 1:30 p.m. (public hearing).  
 October 25, 1984, 10:00 a.m. to 1:30 p.m. (public hearing).

**ADDRESSES:** Room 317, United States Courthouse, Foley Square, New York, New York 10007 (October 22, morning closed meeting); the Conference Room, Federal Hall, 26 Wall Street, New York, New York 10005 (October 22, afternoon closed meeting); the Rotunda, Federal Hall, 26 Wall Street, New York, New York 10005 (October 23, 24, and 25, public hearings).

**FOR FURTHER INFORMATION CONTACT:**

James D. Harmon, Jr., Executive Director and Chief Counsel, President's Commission on Organized Crime, 1425 K Street NW., Suite 700, Washington, D.C. 20005; (202) 786-3515.

**SUPPLEMENTARY INFORMATION:** The first closed meeting on October 22 will be conducted to permit certain members of the Commission to be briefed concerning procedures for the handling and storage of classified and sensitive information by the Commission and its staff. Pursuant to the authority vested in him by section 8 of Pub. L. 98-368, the Chairman of the Commission has determined that this briefing is exempted from the public hearing requirements of the Federal Advisory Committee Act by 5 U.S.C. 552b(c)(1), which is incorporated by reference into the Federal Advisory Committee Act.

The second closed meeting on October 22 will be conducted to discuss several matters. The Commission will be briefed concerning the investigation by the Commission staff of the organized criminal groups whose illegal activities are to be described at the public hearings. This briefing is likely to include repeated references to specific individuals who are confidential sources for the Commission, or who are alleged to be direct participants in illegal activities but whose participation will not specifically be discussed by witnesses at the public hearing. The physical safety of these individuals could be placed in jeopardy if the identities of the witnesses and the time and place of their testimony were to be made public in advance of the public hearings. Pursuant to the authority

vested in him by section 8 of Pub. L. 98-368, the Chairman of the Commission has determined that these discussions are exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C. 552b(c) (5) and (7) (C), (D), and (F), which is incorporated by reference into the Federal Advisory Committee Act.

The Commission will also discuss a number of issues specifically concerning the Commission's issuance of subpoenas. It will discuss, for example, issues relating to certain individuals who have already been, or may be, served with subpoenas by the Commission, and who are to testify in depositions conducted by the staff of the Commission or in public hearings conducted by the Commission. Pursuant to the authority vested in him by section 8 of Pub. L. 98-368, the Chairman of the Commission has determined that this discussion is exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C. 552b(c)(10), which is incorporated by reference into the Federal Advisory Committee Act.

The October 23, 24, and 25 meetings, which are open to the public and press, are for the purpose of receiving testimony concerning the activities conducted by organized criminal groups of Asian origin in the United States operating as part of networks extending to Asia and Europe. The Commission will solicit testimony concerning the scope of activities of such groups, the manner in which their operations are conducted, and the effectiveness of Federal and state statutes and agencies in dealing with such groups. In particular, the Commission will solicit testimony from Federal, state, and local prosecutors and investigators and from private citizens concerning the origins and historical background of these groups, the impact that such groups have had on local communities throughout the United States and on the U.S. economy as a whole, and the experience of U.S. and foreign law enforcement authorities in seeking to reduce that impact and to counteract the growing influence of such groups. Members of the public who wish to present written statements to the Commission are invited to send such statements to the President's Commission on Organized Crime, 1425 K Street NW., Suite 700, Washington, D.C. 20005.

Dated: October 2, 1984.  
 William French Smith,  
 Attorney General.

[FR Doc. 84-26557 Filed 10-4-84; 8:45 am]  
 BILLING CODE 4410-01-M

**Bureau of Prisons****National Institute of Corrections Advisory Board; Meeting**

Notice is hereby given that the National Institute of Corrections Advisory Board will meet on October 22, 1984, starting at 8:30 a.m., at the Sheraton National Hotel, Columbia Pike and Washington Blvd., Arlington, Virginia, 22204. At this meeting (one of the regularly scheduled triannual meetings of the Advisory Board), the Board will receive its subcommittees' reports and recommendations as to future thrusts of the Institute.

Raymond C. Brown,

Director.

[FR Doc. 84-26465 Filed 10-4-84; 8:45 am]

BILLING CODE 4410-05-M

**DEPARTMENT OF LABOR****Office of the Assistant Secretary for Veterans Employment and Training****Solicitation for Grant Application; Job Training Partnership Act, Title IV, Part C, Program Year 1984**

**AGENCY:** Office of the Assistant Secretary for Veterans Employment and Training, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice sets forth the procedures and schedule for the Solicitation for Grant Application (SGA) for the operation of employment and training programs to meet the employment and training needs of Hispanic, Black and other minority veterans in accordance with Title IV, Part C of the Job Training Partnership Act (JTPA).

**DATE:** The SGA will be available for issuance to interested applicants on or about October 15, 1984.

The closing date for receipt of grant applications in response to the SGA is November 13, 1984, by no later than 4:30 p.m., prevailing Washington, D.C. time.

**ADDRESS:** A copy of the SGA may be obtained by written request only, including two self-addressed mailing labels, to the following address: U.S. Department of Labor, Office of Procurement Services, Frances Perkins Building, Room S-5526, 200 Constitution Avenue NW., Washington, D.C. 20210. RE: SGA-IV-Minority.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia Challenger, Office of Procurement Services at the above address. Telephone (202) 523-6246.

**SUPPLEMENTARY INFORMATION:** The Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor, announces the availability of \$750,000.00 to implement programs to meet the employment and training needs of minority veterans who are service-connected disabled veterans, veterans of the Vietnam era, and veterans who are recently separated from military service under Title IV, Part C, of JTPA.

Applications for funds under this SGA will be accepted from public agencies, community-based organizations, units of local and state government, private for profit and non-profit organizations that possess the requisite understanding and capabilities to conduct an effective program for targeted minority veterans.

The SGA contains proposed funding levels for grant awards up to \$375,000.00 each for projects in the following categories:

1. Employment and Training Program(s) to meet the employment and training needs to Hispanic Veterans who are Vietnam era, service-connected disabled or recently separated from military service veterans.

2. Employment and Training Program(s) to meet the employment and training needs of Black and other minority veterans who are Vietnam era, service-connected disabled or recently separated from military service veterans.

Applications must be received by the Office of Procurement Services, Room S-5526, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, D.C. 20210 not later than 4:30 p.m., prevailing Washington, D.C. time on November 13, 1984.

Award of funds will be made through a competitive discretionary process utilizing the criteria for an award specified in the solicitation. It is anticipated that grant awards will be made on or about December 1, 1984.

Signed at Washington, D.C., this 2nd day of October 1984.

Donald E. Shasteen,

Deputy Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 84-26532 Filed 10-4-84; 8:45 am]

BILLING CODE 4510-79-M

### Employment and Training Administrative

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has

instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 15, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 15, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 28th day of September 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

### APPENDIX

Petitioner (Union/workers or former workers of)—	Location	Date received	Date of petition	Petition No.	Articles produced
Cannon Shoe Company-Hagerstown Shoe Co. Div. (workers)	Hagerstown, MD	9/27/84	9/24/84	TA-W-15,473	Shoes, dress, men's.
Duolite International Inc. (workers)	Redwood City, CA	9/18/84	9/6/84	TA-W-15,474	Ion exchange resins.
Eaton Corp. (workers)	Shelbyville, TN	9/27/84	9/20/84	TA-W-15,475	Transmissions, heavy, truck.
Fishing Vessel "Merluccius" (Co.)	Fort Bragg, CA	9/28/84	9/20/84	TA-W-15,476	Rock cod, dover trawnfishing, catching and selling.
Joseph M. Herman Shoe Co. (workers)	Pittsfield, ME	9/24/84	9/20/84	TA-W-15,477	Shoes—work.
Miller, Hess & Co., Inc. (workers)	Akron, PA	9/17/84	9/7/84	TA-W-15,478	Shoes—Women's sport & casual.
National Dress Co. (ILGWU)	Belleville, NJ	9/27/84	9/24/84	TA-W-15,479	Dress, blouses—ladies.
Phelps—Dodge Corp., New Cornelia Branch (workers)	Ajo, AZ	9/18/84	9/14/84	TA-W-15,480	Copper ore—mining & processing.
(The) Selmer Co. (UAW)	Elkhart, IN	8/22/84	8/15/84	TA-W-15,481	Clarinets and flutes.
Seneca Foundry, Inc. (workers)	Webster City, IA	9/24/84	9/20/84	TA-W-15,482	Castings, iron, grey.
Stokes Molded Products (UPW)	Trenton, NJ	9/21/84	9/10/84	TA-W-15,483	Cases, battery, rubber, hard, extrusion, plastic.
Tanglewood Manufacturing (workers)	Lakeland, GA	9/21/84	9/14/84	TA-W-15,484	Outerwear, winter, heavy, men's & ladies'.

[FR Doc. 84-26531 Filed 10-4-84; 8:45 am]

BILLING CODE 4510-30-M

### NUCLEAR REGULATORY COMMISSION

#### Advisory Committee on Reactor Safeguards; Combined Subcommittees on GESSAR II/Reliability and Probabilistic Assessment; Meeting

The ACRS Subcommittees on GESSAR II/Reliability and Probabilistic

Assessment will hold a combined meeting on October 18 and 19, 1984, at the Holiday Inn-Airport, 9901 La Cienega Blvd., Los Angeles, CA.

The meeting will be open to public attendance except those portions that may be closed to discuss proprietary information regarding the General Electric Standard Safety Analysis Report.

The agenda for the subject meeting shall be as follows:

Thursday, October 18, 1984—8:30 a.m. until the conclusion of business

Friday, October 19, 1984—8:30 a.m. until the conclusion of business

This will be the first in a series of meetings to review the General Electric

Standard Safety Analysis Report to extend the Final Design Approval so that it will be applicable to future plants. The discussions on the first day will focus on deterministic standard review plan type issues. The discussions on the second day will focus on the GESSAR II treatment of severe accidents and the Probabilistic Risk Assessment performed in connection with the GESSAR II design. The PRA treatment of internal events will be considered.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the General Electric Company, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 2, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-26522 Filed 10-4-84; 8:46 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

**Carolina Power & Light Co.;  
Consideration of Issuance of  
Amendment to Facility Operating  
License and Proposed No Significant  
Hazards Consideration Determination  
and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR-23, issued to Carolina Power and Light Company (the licensee), for operation of the H. B. Robinson Steam Electric Plant Unit No. 2 located in Darlington County, South Carolina.

The amendment would modify the technical specifications to:

A. Allow additional control rod evolutions as follows: (1) Rod drive mechanism timing test, (2) control rod exercise, and (3) positioning of control rods associated with the control bank to <5 steps withdrawn. The additional evolutions could be made while the containment integrity is not intact but only while maintaining a shutdown margin of  $>1\% \Delta k/k$ . This shutdown margin is required in the current Technical Specification. The control rod evolutions requested to be added to the Technical specification is in addition to the rod drop tests currently allowed in Technical specification 3.6.1.c.

B. Correct editorials and errors in TS 3.6.2 and 3.6.3 changing pressure units from "psi" to "psig" and in the basis for TS 3.6 removing the statements "under any circumstances" and "in any occurrence."

These revisions to the technical specifications would be made in response to the licensee's application for amendment dated August 1, 1984.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of

these standards by providing certain examples (48 FR 14870). Examples of actions likely to involve no significant hazards considerations are:

(i) A purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in same way a safety margin, but where the results change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

**Change A—Control Rod Drive Tests**

Although the abnormal rod configurations during these tests may result in some small increase to the probability of a previously analyzed accident (i.e. a boron dilution transient), they will not cause an unsafe situation because of the requirement in the Technical Specification to maintain the reactor  $>1\% \Delta k/k$  shutdown margin when containment integrity is not established.

Limiting transients resulting from these control rod evolutions have been analyzed in the updated Final Safety Analysis Report (FSAR) and in the Plant Transient Analysis for H. B. Robinson Unit 2 at 2300 Mwt with Increased  $F_{\Delta H}^N$ , XN-NF-84-74. The purpose of containment integrity is to prevent the release of radioactivity in the unlikely event of an accident. In cold shutdown, the transient of concern is a boron dilution event. The  $>1\% \Delta k/k$  shutdown requirement allows sufficient time to identify this transient prior to going critical with rods withdrawn as allowed by this specification.

Based on the above review this change maintains the Current Technical Specification limit of  $>1\% \Delta k/k$  and thus is clearly within all acceptable criteria and is similar to example (vi) above. On this basis, the staff proposes to determine that this amendment involves no significant hazards considerations.

**Change B—Editorial Corrections and Errors**

These changes correct an error (psi to psig) and delete editorial phrases in the TS basis.

This change matches example (i) above. On this basis, the staff proposes to determine that this amendment involves no significant hazards considerations.

Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination of no significant hazards considerations.

The Commission has determined that failure to act in a timely way would result in extending the licensee's shutdown for steam generator repair and core reload. The licensee's startup is several months ahead of schedule.

Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the *Federal Register* at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the *Federal Register* and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards considerations. Comments on the proposed determination may be telephoned to Steven A. Varga, Chief of Operating Reactors Branch No. 1, by collect call to 301-492-8035 or submitted in writing to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch. All comments received by October 17, 1984 will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Bethesda, Maryland, this 28th day of September, 1984.

For the Nuclear Regulatory Commission.

Steven A. Varga,  
Chief, Operating Reactors Branch No. 1,  
Division of Licensing.

[FR Doc. 26523 Filed 10-4-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409]

### Dairyland Power Cooperative (La Crosse Boiling Water Reactor); Exemption

#### I

Dairyland Power Cooperative (DPC) (the licensee) is the holder of Provisional Operating License No. DPR-45 which authorizes operation of the La Crosse Boiling Water Reactor (LACBWR). This provides, among other things, that it is subject to all rules, regulations and orders of the Commission now or hereafter in effect. The facility is a boiling water reactor rated at 165 megawatts (thermal) and is located at the licensee's site located in Vernon County, Wisconsin.

#### II

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the primary reactor containment and systems and components which penetrate the containment. Appendix J was published on February 14, 1973 and in August 1975, each licensee was requested to review the extent to which its facility met the requirements.

Appendix J requires that full-pressure tests of airlocks be performed every six months and if airlock doors are opened during periods when containment integrity is required, that airlocks shall be tested within three days of being opened or once every three days, during periods of frequent openings.

By letters dated September 9, 1975, December 21, 1976, and September 26, 1980, Dairyland Power Cooperative stated the differences between the ongoing airlock leakage test program at La Crosse and the Appendix J requirements. The September 26, 1980 submittal requested an exemption from 10 CFR Part 50, Appendix J. By letter dated August 24, 1982, the NRC staff deferred the resolution of the airlock issue to the ongoing Systematic Evaluation Program (SEP). The La Crosse plant has two airlocks; a personnel airlock and a smaller emergency airlock. The SEP addressed the airlock issue in NUREG-0827, Integrated Plant Safety Assessment for the La Crosse Boiling Water Reactor, issued in June 1983. Section 4.22 of NUREG-0827 states:

The licensee's request to continue to test containment airlocks every 4 months does

not satisfy the requirements of Appendix J to 10 CFR Part 50. A reduced pressure test of airlock door seals or other positive means to verify the integrity of the seals within 72 hours of opening or every 72 hours during periods of frequent openings is necessary to satisfy the testing requirements of Appendix J.

In the approximately 15 years that the La Crosse containment airlock door seals have been tested (every 4 months), the tests have not detected a failed door seal caused by seal degradation or damage resulting from airlock use. The failures that have occurred were due to improper testing or damage which resulted from the test\* \* \*

Each airlock door has a single seal. The volume of the airlock is such that even a low-pressure test would require approximately 24 hours so that meaningful results could be obtained. In view of the favorable testing experience, the staff concludes that a modification to provide the capability to perform a leakage test every 72 hours is not warranted.

The licensee has proposed, in a letter dated June 2, 1983, to perform a visual inspection of all airlock door seals within 72 hours of each opening, but not more than every 72 hours, and to replace seals periodically in accordance with the manufacturer's recommendations. The visual inspections will begin in August 1983. The Technical Specification changes are scheduled to be submitted by January 1984. The staff finds this acceptable.

The above discussion relates to the personnel airlock, but is also applicable to the emergency airlock. The emergency airlock is slightly smaller, but still requires about 16 hours to complete a meaningful leak test. The licensee submitted the required Technical Specification amendment request on December 19, 1983. The license amendment will be implemented separately from this exemption.

Subsequently, on July 15, 1983, during a leakage test the inner door gasket of the personnel airlock came out of its seat. During these tests the inner door gasket is most prone to failure, since the test pressure is applied from the opposite direction than the door is designed to seal against. Strongbacks are installed on the containment side of the inner door to help hold it shut against the gasket. In Reportable Occurrence 83-06, dated August 10, 1983, the licensee concluded that the failure was due either to aging of the gasket or to inadequate tightening of the strongbacks on the inner door. The NRC staff has reviewed this occurrence and concludes that since the door gaskets have been placed on a periodic replacement schedule, this event does not alter the staff's conclusion made in NUREG-0827.

Therefore, since (1) full pressure tests are performed more frequently than

required by Appendix J, (2) visual inspections will be performed every three days, (3) the door seals will be replaced periodically, and (4) past testing history indicates adequate performance of door seals; the staff concludes that the licensee's alternative actions will provide reasonable assurance that airlock leakage will not exceed acceptable levels.

Additionally, a limited probabilistic risk analysis was done as part of the Systematic Evaluation Program (SEP) (NUREG-0827, Appendix D) which concluded that airlock testing was of low significance since the probability of excessive leakage through the airlock is small in comparison to the overall probability of excessive containment leakage.

### III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

Therefore, the Commission hereby approves the following exemption:

Exemption is granted from the requirements of Appendix J Section III.D.2.b.iii provided that:

(a) Leakage test of containment airlocks are performed every four (4) months.

(b) Door seals on containment airlocks are visually inspected for degradation after each opening but not required more often than once every 72 hours, and

(c) Door seals on containment personnel and emergency airlocks are replaced periodically in accordance with manufacturer's recommendations.

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 24, 1984, 49 FR 33766).

Dated at Bethesda, Maryland, this 27th day of September 1984.

For the Nuclear Regulatory Commission,  
Darrell G. Eisenhut,  
Director, Division of Licensing, Office of  
Nuclear Reactor Regulation.

[FR Doc. 84-28525 Filed 10-4-84; 8:45 am]  
BILLING CODE 7590-01-M

[Docket No. 50-344 (SFP Amendment)  
(ASLBP No. 84-498-05 LA)]

Portland General Electric Co. et al.  
(Trojan Nuclear Power Plant); Hearing

September 28, 1984.

Before administrative judges: Helen F. Hoyt, Chairperson, Dr. Peter A. Morris, Dr. Oscar H. Paris.

1. In a "Memorandum and Order Following Prehearing Conference" issued June 25, 1984 (unpublished) we ruled that the evidentiary hearing on the Operating License Amendment to allow expansion of the spent fuel pool of the Trojan Nuclear Power Plant pursuant to 10 CFR 2.104(a) and 2.105(a)(4)(i) would commence at 9:00 a.m. on October 10, 1984, in Portland, Oregon. Please be advised that the hearing will be held at the Masonic Temple, 1119 SW. Park Avenue, at Park Avenue and Main Street, in the "Commandry" on the 2nd floor. All parties or their counsel are directed to attend and participate.

2. The Public is invited to attend and observe. Pursuant to 10 CFR 2.715(a) persons who are not parties to the proceeding will be provided an opportunity to make a limited appearance by presenting a brief oral or written statement. Oral statements will be heard at such time as will be announced by the Board at the beginning of the hearing. Written statements will be received by the Board until the record is closed and may be mailed directly to the Board at: Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

3. The Board will provide another opportunity for limited appearances at a later time, if any person who wishes to appear in person is unable to do so during the week of October 10, 1984. Such person should petition for the hearing to be reconvened for the purpose of receiving additional oral limited appearance statements. That petition must show that insufficient notice made it impossible for the petitioner to make a statement during the week of October 10, 1984 and must be filed prior to November 1, 1984. A person who is not a party to the proceeding may make only one limited appearance statement.

It is so ordered.  
Bethesda, Maryland.

For the Atomic Safety and Licensing Board.  
Oscar H. Paris,  
Administrative Judge.

[FR Doc. 84-28524 Filed 10-4-84; 8:45 am]  
BILLING CODE 7590-01-M

### PENSION BENEFIT GUARANTY CORPORATION

Public Information Collection Request  
Submitted for OMB Review

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of information request submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act and its implementing regulations, agencies are required to submit information requests to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public of such a submission. The effect of this notice is to advise the public that the PBGC has requested OMB approval of the collection of information from multiemployer pension plan sponsors adopting plan amendments that are subject to section 4220 of the Employee Retirement Income Security Act of 1974, as amended.

**ADDRESSES:** All written comments should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, D.C. 20503. The proposed information request will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW, Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** John Carter Foster, Multiemployer Regulations Group, Corporate Policy and Regulations Department (611), 2020 K Street, NW, Washington, D.C. 20006; (202) 254-4860. [This is not a toll-free number.]

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1980, codified at Chapter 35 of Title 44 of the United States Code, establishes policies and procedures for controlling paperwork burdens imposed by federal agencies on the public. The Act vests the Office of Management and Budget ("OMB") with regulatory responsibility over these burdens, and that agency has promulgated rules on the clearance of information collections. These rules are found at 5 CFR Part 1320. These rules require the publication in the *Federal Register* of this notice that the Pension Benefit Guaranty Corporation ("PBGC") is seeking clearance of the information request described below.

The PBGC seeks approval by OMB of the information requests contained in a rule that prescribes the procedures to be used by multiemployer plan sponsors submitting plan amendments to the PBGC under section 4220 of the Employee Retirement Income Security Act of 1974, as amended. This rule is designated, "Procedures for PBGC Approval of Plan Amendments" and, when issued, will be located at 29 CFR Part 2677.

Issued at Washington, D.C. on this 27th day of September 1984.

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-26468 Filed 10-4-84; 8:45 am]

BILLING CODE 7708-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 14180; (812-5815)]

### Hiram Walker Commercial Paper, Inc., Filing of Application for an Order Exempting Applicant

October 2, 1984.

Notice is hereby given that Hiram Walker Commercial Paper, Inc. ("Applicant"), 1201 Pennsylvania Avenue, NW., Post Office Box 7566, Washington, D.C. 20044, a Delaware corporation, filed an application on April 3, 1984, and an amendment thereto on September 10, 1984, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the applicant file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of those provisions of the Act relevant to the application.

Applicant states that its sole business will consist of issuing and selling Applicant's commercial paper notes ("commercial paper notes") and other debt securities and advancing the net proceeds of sales thereof to Hiram Walker Resources Ltd., a corporation organized under the laws of the Province of Ontario, Canada (the "Borrower"), and certain of its direct and indirect subsidiary corporation in the United States. According to Applicant, substantially all its assets will consist of promissory notes issued to Applicant by the Borrower or its subsidiaries ("loan notes") evidencing the obligations of the Borrower or its subsidiaries to repay to Applicant indebtedness of the Borrower or its subsidiaries arising by reason of advances made to the Borrower or its subsidiaries by Applicant from the net proceeds of sales of the commercial paper notes or from the proceeds of borrowings (the "Borrowings") made by Applicant from the Atlanta Agency (the "Agency") of The Toronto-Dominion Bank (the "Bank"). Payment of amounts owned by Applicant in respect of each commercial paper note will be supported by an irrevocable letter of credit to be issued by the Agency of the Bank in favor of the holders of such

commercial paper notes or in favor of the bank or trust company named as depository.

Applicant represents that none of its outstanding common stock is, or in the future will be, owned by the Bank or by the Borrower, or by any affiliate of either of them. Applicant further represents that there has been, and undertakes that in the future there will be, no public offerings of Applicant's common stock or of any other equity security of Applicant.

Applicant states that the Borrower is one of the largest corporations in Canada, engaged primarily in the distilled spirits, natural resources and gas distribution business. Applicant states that the Bank, the fifth largest bank in Canada as ranked by deposits at October 31, 1983, provides a wide range of financial services to businesses, governments, financial institutions and individuals. Applicant states that the Agency is licensed under and regulated by the Financial Institutions Code of Georgia (the "Georgia Code") as an international banking corporation.

Applicant asserts that its commercial paper notes will be exempt from the registration requirements of the Securities Act of 1933 (the "Securities Act") by virtue of section 3(a)(2) or 3(a)(3) thereof. Applicant states that the commercial paper notes will be sold in minimum denominations of \$100,000 (U.S.), will have a maturity not exceeding 270 days, and will neither be payable on demand prior to maturity nor eligible for any extension, renewal, or automatic "rollover" at the option of either the holder or Applicant. Applicant undertakes not to market any commercial paper notes prior to receiving an opinion of counsel to the effect that the proposed offering on commercial paper is exempt from the registration requirements of the Securities Act by virtue of sections 3(a)(2) or 3(a)(3) thereof. Applicant further undertakes that, in respect of any future offerings of Applicant's debt securities other than the commercial paper notes, it will comply with, or rely upon the availability of an exemption from the registration requirements of the Securities Act.

According to Applicant, the commercial paper notes will be offered through one or more major dealers, only to the types of sophisticated and largely institutional investors that ordinarily participate in the commercial paper market. Applicant states that while an announcement of the establishment of the commercial paper facility may be made as a matter of record, the offering will not be advertised. Applicant undertakes to insure that each dealer in

the commercial paper notes will furnish to each offeree, memoranda describing the businesses of the Bank, Applicant and the Borrower and providing the most recent annual financial information for the Bank and the Borrower, together with a description of the material differences between the Canadian accounting principles utilized in the preparation of the financial statements of the Bank and generally accepted accounting principles as applied in the United States. Applicant represents that the memoranda prepared by each dealer will be updated as promptly as practicable to reflect material adverse changes in the financial status of the Applicant, the Borrower or the Bank and will be at least as comprehensive as memoranda customarily used in offering commercial paper in the United States.

Applicant represents that the commercial paper notes will be supported by a master letter of credit in the full amount payable under all of the commercial paper notes and the Agency will be required to provide funds to the depository in an amount sufficient to satisfy the Agency's obligations under the letter of credit. Applicant further represents that any other debt securities it issues will also be supported by an irrevocable letter of credit or unconditional guarantee of a bank or other financial institution the unsecured senior debt securities of which have the highest investment grade rating of a nationally recognized statistical rating organization. In addition, Applicant represents that, prior to their issuance, the commercial paper notes and any other debt securities issued by Applicant will have received one of the three highest investment grade ratings from at least two nationally recognized statistical rating organizations, and counsel to Applicant will have certified that the ratings were received. However, no such support or rating will be required to be obtained with respect to an issue of Applicant's debt securities other than commercial paper notes if, in the opinion of counsel, an exemption is available for the issue pursuant to subsection 4(2) of the Securities Act.

Applicant states that it will enter into a credit agreement ("credit agreement") pursuant to which Applicant will agree to make advances to the Borrower or its subsidiaries solely from the net proceeds of the sale of the commercial paper notes or from the net proceeds of the Borrowings from the Agency. Applicant further states that the Borrower will use the proceeds of the advances for the repayment of indebtedness or for other general corporate purposes.

According to the application, the Borrower or its subsidiary will agree to repay Applicant on the maturity date of each advance made to the Borrower or its subsidiary the principal amount thereof, together with interest thereon payable from time to time in an amount sufficient to enable the Applicant to meet its obligations to the Agency and to satisfy its other liabilities in connection with the transactions. Applicant states that each advance made to the Borrower or its subsidiary by Applicant pursuant to the credit agreement will be evidenced by a loan note issued by the Borrower or subsidiary. Each advance will mature on or after the fifth anniversary of the advance and, other than in the event of default under the credit agreement, no mandatory prepayment of any advance will be required, although the Borrower or its subsidiary may elect to prepay an advance in whole or in part.

Applicant states it will be required, pursuant to a pledge and security agreement, to assign and pledge to the Bank acting through the Agency, for its own benefit and for the ratable benefit of the depository and the holders from time to time of the commercial paper notes, all of Applicant's right, title and interest in the repayment obligations of the Borrower and its subsidiaries in respect of the advances. Furthermore, it is represented that during any fiscal year of Applicant, the average daily aggregate principal amount of Applicant's assets, exclusive of any such assets which consist of notes or other obligations of the Borrower or its subsidiaries, will not exceed ten percent of the average daily balance of the aggregate principal face amount of the commercial paper notes, Borrowings and other debt securities outstanding during such fiscal year.

In support of the requested relief, Applicant states that approval of the application is necessary or appropriate in the public interest. Applicant states that the Borrower and its subsidiaries would be permitted to directly issue and sell debt securities in the United States without registering under the Act as an investment company. According to the application, although the Borrower and its subsidiaries would itself be permitted to directly issue commercial paper in public offerings in the United States without compliance with the Act's registration provisions, under current Canadian law interest due on commercial paper issued by the Borrower in the United States would be subject to a fifteen percent Canadian non-resident withholding tax, and, accordingly, would not be competitive

with commercial paper offered in the United States by other issuers. Applicant states that Applicant, the Borrower and the Bank believe that the Borrower's financing objectives can, however, be fulfilled by the establishment of a program whereby a company, such as Applicant, issues commercial paper and advances the proceeds to the Borrower and its subsidiaries. Applicant further states that such a program would enable the Borrower and its subsidiaries to expeditiously gain access to the attractive rates available in the commercial paper market and provide the Borrower and its subsidiaries with an efficient and reliable source of United States dollars without the imposition of the Canadian non-resident withholding tax of fifteen percent, and that prior to the commencement of the program, both Canadian counsel to the Borrower and the Canadian tax authorities will have confirmed the availability of an exemption from the Canadian non-resident withholding tax for financing facility of the type to be established by Applicant.

Applicant also submits that approval of the application would be consistent with the protection of investors. Applicant asserts that its limited business purpose and its obligation to invest only in the loan notes, none of which will be an obligation of an investment company, as well as the irrevocable support of the commercial paper notes by the letter of credit to be issued by the Agency, obviate the need for the regulatory safeguards provided by the Act. Applicant further asserts that the holders of Applicant's commercial paper notes do not require the protections accorded investors under the Act. Applicant states that the letter of credit of the Agency supporting the repayment of the commercial paper notes will be an obligation of the Bank, whose commercial paper notes are currently rated in the highest investment category by Moody's Investors Service, Inc., and by Standard & Poor's Corporation. Applicant also asserts that the characteristics of the commercial paper notes themselves limit the possible exposure of investors. Finally, Applicant contends that the exemption sought in the application would be consistent with the purposes fairly intended by the policy and provision of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 26, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the

reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-26527 Filed 10-4-84; 8:45 a.m.]

BILLING CODE 8010-01-M

[Release No. 21365; File No. ODD-84-1]

### Trans Canada Options Inc. et al.; the Risks and Uses of Listed Canadian Options

October 2, 1984.

In the matter of Trans Canada Options Inc., The Exchange Tower, 2 First Canadian Place, Toronto, Canada M5X 1J2; The Toronto Stock Exchange, The Exchange Tower, 2 First Canadian Place, Toronto, Canada M5X 1J2; The Montreal Exchange, 800 Victoria Square, Montreal, Quebec, Canada H4Z 1A9; Vancouver Stock Exchange, 609 Granville Street, Vancouver, British Columbia, Canada V7Y 1H1.

On July 13, 1984, Trans Canada Options Inc. ("TCO") the Toronto, Montreal, and Vancouver Stock Exchanges ("Exchanges") submitted preliminary copies of an options disclosure document to the Commission pursuant to Rule 9b-1 of the Securities Exchange Act of 1934 ("Act"). The disclosure document discusses the risks and uses of Canadian exchange-traded put and call options available to United States investors. On September 10, 1984, the Exchanges and TCO filed five copies of Amendment No. 1 to the disclosure document.

Rule 9b-1 provides that an options market must file five preliminary copies of an options disclosure document with the Commission at least 60 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the protection of investors. This provision is intended to permit the Commission either to accelerate or extend the time period before definitive copies of a disclosure

document may be distributed to the public.

The Commission has reviewed the disclosure document, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the disclosure document as of the date of this order.<sup>1</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,  
Acting Secretary.

[FR Doc. 84-26528 Filed 10-4-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21360; File No. SR-CBOE-84-26]

**Self-Regulatory Organization;  
Proposed Rule Change; Chicago Board  
Options Exchange, Inc.; Relating to  
Simplified Arbitration**

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 15, 1984 the Chicago Board Options 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. Text of the Proposed Rule Change**

Additions are italicized; deletions are bracketed.

**Simplified Arbitration**

Rule 18.4 (a) Any dispute, claim or controversy, arising between a public customer(s) and an associated person or a member subject to arbitration under this Code involving a dollar amount not exceeding **[\$2,500.00]** *\$5,000*, exclusive of attendant costs and interest, shall upon demand of the customer(s) or by written consent of the parties, be arbitrated as hereinafter provided.

(b) No change.

**[(c) The claimant shall pay the sum of \$15.00 upon filing of the Submission Agreement. The final disposition of this sum shall be determined by the arbitrator.]**

<sup>1</sup> Rule 9b-1 provides that the use of an options disclosure document shall not be permitted unless the options class to which the document relates is the subject of an effective registration statement on Form S-20 under the Securities Act of 1933. On July 24, 1984, the Commission, pursuant to delegated authority, declared effective TCO's Form S-20 registration statement covering the options described in the Listed Canadian Options Disclosure Document. See File No. 2-69458.

**[(d)] (c)** The claimant shall pay the sum of \$15.00 upon filing of the Submission Agreement *if the amount in controversy is \$1,000 or less, \$25.00 if the amount in controversy is more than \$1,000, but \$2,500 or less, or \$100.00 if the amount in controversy is more than \$2,500 but does not exceed \$5,000.* The final disposition of this sum shall be determined by the arbitrator. The Director of Arbitration shall endeavor to serve promptly, by mail or otherwise, on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. The Respondent(s) shall, within twenty (20) calendar days from receipt of service, file with the Director of Arbitration one (1) executed Submission Agreement and one (1) copy of the Respondent's answer, together with supporting documents. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) has interposed a Third Party Claim, the Director of Arbitration shall endeavor to serve promptly by mail or otherwise a copy of same, together with a copy of the Submission Agreement on such Third Party who shall respond in the manner herein provided for response to the Claim. If the Respondent(s) files a related Counterclaim exceeding **[\$2,500.00]** *\$5,000*, the arbitrator may refer the claim, counterclaim and/or Third Party Claim, if any, to a panel of three (3) or five (5) arbitrators in accordance with § 18.10 of this Code, or, he may dismiss the Counterclaim and/or Third Party Claim, without prejudice to the Counterclaimant(s) and/or Third Party Claimant(s) pursuing the Counterclaim and/or Third Party Claim in a separate proceeding.

**Time Limitation Upon Submission**

Rule 18.6 No dispute, claim or controversy shall be eligible for submission to arbitration under this Code where six (6) year shall have elapsed from the occurrence or event giving rise to the act or the dispute, claim or controversy. This section shall not extend applicable statutes of limitation, *nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.*

**Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration**

Rule 18.9 (a) Where permitted by law, the time limitation(s) which would otherwise run or accrue for the

institution of legal proceedings, shall be tolled when **[all the parties shall have filed duly executed Submission Agreements upon the dispute, claim or controversy submitted to arbitration]** *a duly executed Submission Agreement is filed by the Claimant(s).* The tolling shall continue for such period as the Exchange shall retain jurisdiction upon the matter submitted.

(b) *The six (6) year time limitation upon submission to arbitration shall not apply when the parties have submitted the dispute, claim or controversy to a court or competent jurisdiction. The six (6) year time limitation shall not run for such period as the court shall retain jurisdiction upon the matter submitted.*

**Peremptory Challenges**

Rule 18.12 **[In an arbitration proceeding being heard by a panel consisting of more than one (1) arbitrator, each party shall have the right to one (1) peremptory challenge.]** *In any arbitration proceeding, each party shall have the right to one (1) peremptory challenge. In arbitrations where there are multiple Claimants, Respondents and/or Third Party Respondents, the Claimants shall have one peremptory challenge, the Respondents shall have one peremptory challenge and the Third Party Respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the persons named to the panel. There shall be unlimited challenges for cause.*

**Initiation of Proceedings**

Rule 18.15 except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) No change.

(b) Answer-Defenses, Counterclaims and/or Crossclaims

(1) The Respondent(s) shall within twenty (20) business days from receipt of service file with the Director of Arbitration one (1) executed Submission Agreement and one (1) copy of the Respondent's(s)' Answer. The Answer shall **[designate all available defenses to the statement of claim and]** *specify all available defenses and relevant facts that will be relied upon at hearing and may set forth any related Counterclaim*

the Respondent(s) may have against the Claimant and any third-party claim against any other party or person upon any existing dispute, claim or controversy to arbitration under this Code.

(2) (i) A Respondent, Responding Claimant, Cross-Claimant or Third-Party Respondent who pleads only a general denial as an answer may, upon written objection by the adversary party before the hearing to the Director of Arbitration, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.

(ii) A Respondent, Responding Claimant, Cross-Claimant or Third-Party Respondent who fails to specify all available defenses and relevant facts in such party's answer, may, upon objection by the adversary party, in the discretion of the arbitrators, be barred from presenting the facts or defenses not included in such party's answer at the hearing.

Old (b)(2) becomes (b)(3), (b)(3) becomes (b)(4), and (b)(4) becomes (b)(5)

(c) Joining and Consolidation—  
Multiple Parties

(1) With respect to any dispute, claim or controversy submitted to arbitration, any party or person eligible to submit a claim under this Code shall have the right to proceed in the same arbitration against any other party or person upon any claim directly related to such dispute.

(2) For purposes of this subsection, the Director of Arbitration shall be authorized to determine preliminarily whether a claim is directly related to the matter in dispute and to join any other party to the dispute and to consolidate the matter for hearing and award purposes. In arbitrations where there are multiple Claimants, Respondents and/or Third Party Respondents, the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations.

(3) All final determinations with respect to joining, [and] consolidation and multiple parties under this subsection shall be made by the arbitration panel.

#### Amendments

Rule 18.29 [No amendment to the pleadings shall be permitted after receipt of a responsive pleading except upon the consent of the arbitrators and upon such terms and conditions as they may direct.] (a) After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with

the Director of Arbitration. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise upon all other parties a copy of said change. The other parties may, within ten (10) business days from the receipt of service, file a response with the Director of Arbitration.

(b) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

#### Schedule of Fees

Rule 18.33 (a) At the time of filing a Submission Agreement, a Claimant shall deposit with the Association the amount indicated below unless such a deposit is specifically waived by the Director of Arbitration.

Amount in Dispute.....	Deposit
(Exclusive of interest and expenses)	
[\$2,500 or less...See Simplified Arbitration, Rule 18.4]	
\$1,000 or less.....	\$15
Above \$1,000—but not exceeding \$2,500.....	\$25
Above \$2,500—but [less than] not exceeding \$5,000.....	\$100
Above \$5,000—but [less than] not exceeding \$10,000.....	\$200
Above \$10,000—but [less than] not exceeding \$20,000.....	[\$250] \$300
Above \$20,000—but [less than] not exceeding \$100,000.....	[\$350] \$500
Above \$100,000—[\$550] \$750	

Where the amount in dispute is \$10,000 or less, no additional deposits shall be required despite the number of sessions. Where the amount in dispute is above \$10,000 [or more] and multiple sessions are required, the arbitrators may require any of the parties to make additional deposits for each additional session. In no event shall the aggregate amount deposited per session exceed the amount of the initial deposit as set forth in the above schedule.

(b) The arbitrators, in their awards, may determine the amount chargeable to the parties as forum fees (fees) and shall determine by whom such fees shall be borne. Where the amount in dispute is [less than] \$10,000 or less, total fees to the parties shall not exceed the amount deposited. Where the amount in dispute is above \$10,000 [or more] but [less than] does not exceed \$20,000, the maximum fee shall be [\$250] \$300 per session. Where the amount in dispute is above \$20,000 [or more] but [less than] does not exceed \$100,000, the maximum fee shall be [\$350] \$500 per session. Where the amount in dispute is above \$100,000 [or more] the maximum fee shall be [\$550] \$750 per session. In no event shall the fees assessed by the arbitrators exceed

[\$550] \$750 per session. In no event shall the fees assessed by the arbitrators exceed [\$500] \$750 per session. Amounts deposited by a party shall be applied against fees, if any. If the fees are not assessed against a party who had made a deposit, the deposit will be refunded.

(c) If the dispute, claim or controversy does not involve or disclose a money claim, the amount to be deposited by the claimant shall be \$100, or such amount as the Director of Arbitration or the panel of arbitrators may require but shall not exceed [\$500] \$750.

(d) No change.

(e) No change.

(f) The arbitrators may assess forum fees and Rule 18.23 costs in any matter settled or withdrawn subsequent to the commencement of the first session.

#### 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 and is set forth in sections (A), (B), and (C) below.

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Chapter 18 of Exchange rules incorporates the Uniform Code of Arbitration developed by the Securities Industry Conference on Arbitration and approved by the Securities and Exchange Committee. The Code establishes a uniform system of arbitration procedures used by the exchanges and the NASD. In response to experience gained in administering the arbitration program, the following amendments to the Code are proposed.

Rule 18.4 prescribes the small claims procedure. This Section of the Code will be amended to raise the limit on the small claims proceedings from \$2,500 to \$5,000 exclusive of interest and costs.

Rule 18.6 will be amended to prevent the time limitation on submissions from barring the submission of a claim which is directed to arbitration by a court.

The amendments to Rule 18.9 provide that, where permitted by law, the statute of limitations will be tolled when a claimant, rather than all parties, files a submission agreement. The amendments also add a subsection to extend the 6-

year limitation on submissions for such period of time as a court may retain jurisdiction over the dispute.

Rule 18.12 is amended to provide for additional peremptory challenges in the discretion of the Arbitration Director where there are multiple claimants or respondents. The rule also will state explicitly that there will be unlimited challenges for cause.

There are two amendments to Rule 18.15. The first specifically authorizes the arbitrators to bar a respondent from presenting a defense if the respondent has submitted only a general denial or if the response fails to specify all available defenses. The second change permits the Arbitration Director to sever arbitrations where there are multiple claimants.

Rule 18.29 has been amended to specify how amendments to pleadings should be made.

Rule 18.33 establishes a new fee schedule. In general, it slightly increases filing fees in certain cases in order to help defray expenses of administering the arbitration program.

The proposed rules changes are consistent with the requirements of the Securities Exchange Act of 1934 in that they will clarify the administrative procedures used in the arbitration program, enhancing the effectiveness of that program.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments were neither 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 submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 the Commission's Public Reference Section, 450 Fifth Street, N.W., 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 October 26, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 27, 1984.

Shirley E. Hollis,  
Acting Secretary.

[FR Doc. 84-26529 Filed 10-4-84; 8:45 am]

BILLING CODE 8010-01-M

**SMALL BUSINESS ADMINISTRATION**

**Nebraska; Region VII Advisory Council; Public Meeting**

The Small Business Administration Region VII Advisory Council, located in the geographical area of Omaha, Nebraska, will hold a public meeting from 10:00 a.m. to 2:30 p.m., on Monday, October 15, 1984, at the office of the District Director, U.S. Small Business Administration, 19th and Farnam, Omaha, Nebraska 68102, to discuss such matter as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Rick Budd, District Director, U.S. Small Business Administration, 19th and Farnam, Omaha, Nebraska 68102; phone (402) 221-4691.

Dated: September 20, 1984.

Jean M. Nowak,  
Director, Office of Advisory Councils.

[FR Doc. 84-26491 Filed 10-4-84; 8:45 am]

BILLING CODE 8025-01-M

**New Hampshire; Region I Advisory Council; Meeting**

The Small Business Administration Region I Advisory Council, located in the geographical area of Concord, New Hampshire, will hold a public meeting at 10:00 a.m., on Wednesday, October 24, 1984, in the Concord National Bank Board Room, Concord National Bank, 43 N. Main and Warren Streets, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call William Phillips, District Director, U.S. Small Business Administration, 55 Pleasant Street, Concord, New Hampshire 03301, (603) 224-4041.

Dated: September 20, 1984.

Jean M. Nowak,  
Director, Office of Advisory Councils.

[FR Doc. 84-26492 Filed 10-4-84; 8:45 am]

BILLING CODE 8025-01-M

**New Jersey; Region II Advisory Council; Public Meeting**

That Small Business Administration, Region II Newark District Advisory Council, located in the geographical area of Newark, New Jersey, will hold a public meeting at 9:00 AM on Thursday, November 1, 1984, at the Ramada Inn, 36 Valley Road, Clark, New Jersey 07066, to discuss such business as may be presented by members and the staff of the Small Business Administration or others attending. For further information, write or call Andrew P. Lynch, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey 07102, (201) 645-3580.

Dated: September 20, 1984.

Jean M. Nowak,  
Director, Office of Advisory Councils.

[FR Doc. 84-26493 Filed 10-4-84; 8:45 am]

BILLING CODE 8025-01-M

**Small Business Investment Co.; Maximum Annual Cost of Money to Small Business Concerns**

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged by the

Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective October 1, 1984, and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 12.645% per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as amended by section 524 of Pub. L. 96-221, March

31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: October 2, 1984.

**Robert G. Lineberry,**  
Deputy Associate Administrator for  
Investment.

[FR Doc. 84-26490 Filed 10-4-84; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

[Public Notice 919]

### Schedule of Cost Comparison Studies

In accordance with OMB Circular A-

76 (Revised), Performance of Commercial Activities, Supplement, Part I, Chapter 1, Section C., 1., b., this notice announces the schedule of cost comparison studies for the Department of State. The studies listed will begin in October and November, 1984. Additional studies will be scheduled for fiscal years 1985 through 1987.

**FOR FURTHER INFORMATION CONTACT:** A-76 Coordinator, Office of Management Operations, Room 7427, Department of State, Washington, DC 20520; Tel. (202) 632-1368.

Dated: September 28, 1984.

**Willard A. De Pree,**  
Director, Office of Management Operations

#### DEPARTMENT OF STATE INVENTORY OF COMMERCIAL ACTIVITIES

Name of activity	Location of activity	Description of activity	Approximate number of FTEs	Date of last review	Review date start
Less than 10 FTEs					
M/COMP/FO automation and communications.	Arlington, Va.	Systems management of financial operations computer facility	3		October 1984.
More than 10 FTEs					
OC/P	Washington, D.C. and Newington, Va.	Preparation and dispatch of unclassified diplomatic pouches	32		Do.
M/COMP/FO special accounts and collections.	Arlington, Va.	Billing and collection of accounts receivable, Accounting and reporting of trust accounts and working capital fund.	26		November 1984.
OC/T	Washington, D.C.	Operation of automated printing and reproduction facility	19		Do.
CA/PPT automated records branch.	do	Process passport applications including microfilming and indexing	50		October 1984.

Additional activities will be scheduled for FY 85-87.

[FR Doc 84-26484 Filed 10-4-84; 8:45 am]

BILLING CODE 4710-35-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Notice 84-16]

#### Commercial Space Transportation Advisory Committee; Announcement of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. I), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee. The meeting will take place on Monday, October 22, 1984, from 9:00 a.m. to 5:00 p.m. ET, and Tuesday, October 23, 1984 from 8:30 a.m. to 12:00 noon ET, in Room 2230 of the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, D.C. This will be the first meeting of the Committee, which will address background, organizational, licensing/regulatory, legislative, and policy issues related to

the commercial development of expendable launch vehicles. The members of the committee are:  
William Rector, Vice President, General Dynamics;  
Norman Augustine, Vice President, Martin-Marietta;  
Adolph Medica, Executive Vice President, Chemical Systems, United Technology/Aerojet;  
Lionel Alford, Vice President for Aerospace, Boeing;  
Donald (Deke) Slayton, President, Space Services, Inc., and former astronaut;  
David Grimes, Chairman and Chief Technical Officer, Transpace Carriers;  
Leonard Cormier, President, Transpace, Inc.;  
Jerry Simonoff, Vice President, Citicorp Industrial Credit, Inc.;  
Jonathan Conrad, Sconset Group;  
Diana Josephson, President, Space America;  
Robert Roney, Vice President, Space and Communications, Hughes;

Bernard Schriever, General, United States Air Force (Retired), consultant to the aerospace industry;  
Gregg Fawkes, National Chamber Foundation;  
George Robinson, Smithsonian Institution;  
Kip Hawley, White House liaison to State and local governments;  
Gerald Mossinghoff, United States Commissioner of Patents and Trademarks;  
Dr. Jerry Grey, Editor, American Institute of Aeronautics and Astronautics, and consultant to the space industry;  
Joel Alper, President, Comsat World Systems Division, Communications Satellite Corporation;  
Ronald F. Stowe, Vice President, Government and Commercial Affairs, Satellite Business Systems;  
Daniel A. Ruskin, Vice President, Government Requirements, Lockheed Missiles;

T. Allan McArtor, Vice President,  
Satellite Systems Division, Federal  
Express Corporation; and  
Alton Slay, President, Slay Enterprises,  
Inc.

This meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained from the DOT Office of Commercial Space Transportation, Room 10401, 400 Seventh Street, SW., 20590, Contact: Leah G. Levy, Telephone 202/426-5770.

**Please Note.**—New security procedures restrict admittance to the Department of Transportation Building. Your admittance will be facilitated if you call the telephone number above before arrival.

Issued in Washington, DC, on October 3, 1984.

Jennifer L. Dorn,

Director, Office of Commercial Space Transportation.

[FR Doc. 84-20676 Filed 10-4-84; 10:21 am]

BILLING CODE 4910-82-M

#### Federal Aviation Administration

##### Flight Service Station at Lone Rock, WI; Closing

Notice is hereby given that on or about October 8, 1984, the Flight Service Station at Lone Rock, Wisconsin, will be closed. Services to the general aviation public of Lone Rock, Wisconsin, Flight Plan Area, formerly provided by this office, will be provided by the Flight Service Station in Green Bay, Wisconsin. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Des Plaines, IL, on September 28, 1984.

Paul K. Bohr,

Director, Great Lake Region.

[FR Doc. 84-20430 Filed 10-4-84; 8:45 am]

BILLING CODE 4910-13-M

##### Radio Technical Commission for Aeronautics (RTCA) Special Committee 149; Airborne Distance Measuring Equipment (DME); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 149 on Airborne Distance Measuring Equipment (DME) to be held on October 24-26, 1984 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Eighth Meeting Held on August 8-10, 1984; (3) Report on Coordination with the European Organization for Civil Aviation Electronics (EUROCAE) Working Group 25; (4) Report on Coordination with RTCA Special Committee 151 on Airborne MLS Area Navigation Equipment; (5) Review Task Assignments From Previous Meeting; (6) Review Ninth Draft of Committee Report on Minimum Operations Performance Standards for Airborne Distance Measuring Equipment; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 27, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-20426 Filed 10-4-84; 8:45 am]

BILLING CODE 4910-13-M

##### Radio Technical Commission for Aeronautics (RTCA) Special Committee 150; Minimum System Performance Standards for Vertical Separation Above Flight Level 290; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 150 on Minimum System Performance Standards for Vertical Separation Above Flight Level 290 to be held on October 29-31, 1984 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Seventh Meeting Held on July 17-19, 1984; (3) Review of Draft Committee Report; (4) Review and Discussion of Working Group Activities on System Performance Requirements, Altimetry System Errors, and Flight Technical Errors; and (5) Other Business.

Attendance is open to the interested public but limited to space available.

With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005, (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on September 27, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-20427 Filed 10-4-84; 8:45 am]

BILLING CODE 4910-13-M

#### DEPARTMENT OF THE TREASURY

##### Office of the Secretary

##### List of Countries Requiring Cooperation With an International Boycott

###### Correction

In FR Doc. 84-25502 appearing on page 37889 in the issue of Wednesday, September 26, 1984, in the list of countries, "Lebanon" should appear between "Kuwait" and "Libya".

BILLING CODE 1505-01-M

#### Internal Revenue Service

##### Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on November 1 & 2, 1984. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue NW., Washington, D.C. The meeting will begin at 9:00 a.m. on Thursday, November 1, and 9:00 a.m. on Friday, November 2. The agenda will include the following topics:

*Thursday, November 1, 1984*

Recapitulation of Topics considered by this Advisory Group  
Service Center Operations  
Auto Collect

*Friday, November 1, 1984*

Penalty Provisions  
Issuance of "Friendly" Summons  
Pre-Filing Programs.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people. If you would like to have the Committee consider a written statement, please call

or write to Frederic P. Williams, Acting Assistant to the Deputy Commissioner, 1111 Constitution Avenue NW., Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** Frederic P. Williams, Acting Assistant to the Deputy Commissioner, (202) 566-4143 (Not toll free).

James I. Owens,  
Acting Commissioner.

[FR Doc. 84-26497 Filed 10-4-84; 8:45 am]

BILLING CODE 4630-01-M

## UNITED STATES INFORMATION AGENCY

### Reporting and Information Collection Requirements Under OMB Review

**AGENCY:** United States Information Agency.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made such a submission. USIA is requesting approval for a three year extension of the approval for the use of our Form IAP-37, "Exchange Visitor Program Application."

**DATE:** Comments must be received by November 9, 1984.

Copies: Copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

**FOR FURTHER INFORMATION CONTACT:** Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485-8676. And OMB review: Michael Weinstein, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-4814.

**SUPPLEMENTARY INFORMATION:** Exchange Visitor Program Application.

### Abstract

This information collection is intended to permit private businesses, government agencies and public and private educational institutions to apply for the authority to bring students, scholars, professors, trainees and international visitors to the United States as Exchange Visitors on the Exchange Visitor Visa J-1. Information is used to evaluate prospective Exchange Visitor sponsors.

Dated: October 2, 1984.

Charles N. Canestro,  
Management Analyst, Federal Register Liaison.

[FR Doc. 84-26498 Filed 10-4-84; 8:45 am]

BILLING CODE 8230-01-M

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects to be included in the exhibit, "Degas: The Dancers" (included in the list<sup>1</sup> filed as a

<sup>1</sup> An itemized list of objects included in the exhibit is filed as part of the original document.

part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between The National Gallery of Art, Washington, D.C., and foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about November 22, 1984, to on or about March 10, 1985, is in the national interest.

Public notice of this determination is ordered to be published in the *Federal Register*.

Dated: October 3, 1984.

Thomas E. Harvey,  
General Counsel and Congressional Liaison.

[FR Doc. 84-26662 Filed 10-4-84; 8:45 am]

BILLING CODE 8230-01-M

## VETERANS ADMINISTRATION

### Scientific Review and Evaluation Boards; Health Services Research and Development; and Rehabilitation Research and Development; Charter Renewals

This is to give notice in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) that charters for the above-named committees have been renewed by the Administrator of Veterans Affairs for a two year period beginning September 7, 1984 through September 7, 1986.

Dated: September 26, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,  
Committee Management Officer.

[FR Doc 84-26457 Filed 10-4-84; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register

Vol. 49, No. 195

Friday, October 5, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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### FEDERAL COMMUNICATIONS COMMISSION

#### Deletion of Agenda Item From September 26th Open Meeting

The following item has been deleted at the request of the Mass Media Bureau from the list of agenda items scheduled for consideration at the September 26, 1984, Open Meeting and previously listed in the Commission's Notice of September 19, 1984.

#### Agenda, Item, and Subject

Mass Media—3—Title: Amendment of Parts 2, 73 and 76 of the Commission's Rules to Authorize the Transmission of Teletext by TV Stations. Summary: The Commission will consider a *Memorandum Opinion and Order* to address petitions for reconsideration filed by sixteen parties concerning its *Report and Order* authorizing television stations to operate teletext services (BC Docket 81-741).

Mass Media—7—Title: Applications of CBS, Inc., Direct Broadcast Satellite Corporation, Graphic Scanning Corporation, RCA American Communications, Inc., and Western Union Telegraph Company for modification of their construction permits to establish Interim Direct Broadcast Satellite Systems and those parties' demonstrations of due diligence in the implementation of their proposed systems, and requests of Satellite Television Corporation, United States Satellite Broadcasting Co., Inc. and Dominion Video Satellite, Inc. for further modification of their Direct Broadcast Satellite System construction permits. Summary: The Commission considers these modification applications and due diligence demonstrations to determine which of the applicants have met the Commission's requirements and will be assigned DBS channels and orbital positions, as well as the further modification requests by three permittees already assigned channels and

orbital positions. The Commission also considers comments by various parties regarding the sufficiency of some of the due diligence demonstrations.

Common Carrier—1—Title: Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor: Sixth Report and Order (CC Docket No. 79-252). Summary: The Commission will consider whether to adopt a Report and Order that outlines steps for further implementation of its policy of forbearance from requirement of tariffs and facilities authorizations applications from carriers subject to competition.

Common Carrier—2—Title: Memorandum Opinion and Order in the Matters of Pacific Bell, Southern Bell and South Central Bell, Southwestern Bell, New York Telephone and New England Telephone, New Jersey Bell, Northwestern Bell, and Pacific Northwest Bell Petitions for Waiver of § 64.702 of the Commission's Rules and Regulations To Provide Certain Types of Protocol Conversion Within Their Basic Telephone Networks. Summary: The Commission will consider whether to waive the *Computer II* Rules to enable the petitioning Bell Operating Companies to provide certain types of protocol conversion within their telephone networks, specifically X.25-to-X.75 protocol conversion.

Common Carrier—3—Title: Second Report and Order, General Docket No. 80-112. Summary: The Commission will consider adopting rules to allow the use of lotteries for the selection of Multichannel Multipoint Distribution Service licensees.

William J. Tricarico,  
Secretary, Federal Communications  
Commission.

[FR Doc. 84-26129 Filed 10-3-84; 3:23 pm]

BILLING CODE 6712-01-M

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### FEDERAL ELECTION COMMISSION

DATE AND TIME: Wednesday, October 10, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, October 11, 1984, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings  
Correction and approval of minutes  
Eligibility for candidates to receive

Presidential Primary Matching Funds  
Draft Advisory Opinion #1984-46

Rod Johnston, Wisconsin State Senator  
Finance Committee Report  
Routine administrative matters

#### PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer,  
202-523-4065.

Mary W. Dove,  
Administrative Secretary.

[FR Doc. 84-26561 Filed 10-3-84; 11:10 am]

BILLING CODE 6715-01-M

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### FEDERAL ENERGY REGULATORY COMMISSION

October 3, 1984.

TIME AND DATE: 10:00 A.M., OCTOBER 10, 1984.

PLACE: 825 NORTH CAPITOL STREET, NE.,  
ROOM 9306, WASHINGTON, D.C. 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: AGENDA.

Note.—Items listed on the agenda may be deleted without further notice.

#### CONTACT PERSON FOR MORE

INFORMATION: Kenneth F. Plumb,  
Secretary, Telephone: (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

#### Consent Power Agenda

799th Meeting—October 10, 1984

Regular Meeting (10:00 a.m.)

CAP-1: Project No. 2738-009, New York State  
Electric & Gas Corporation

CAP-2: Project No. 7136-001, Jay R. Bingham  
and Lawrence J. McMurtrey

CAP-3: Project No. 7800-000, Turlock  
Irrigation District & Modesto Irrigation  
District

CAP-4: Project No. 4182-001, Cogeneration,  
Inc.

CAP-5: Docket No. QF83-175-003, James A.  
Drake and Miller's Plant Farm—Foliage  
and Chrysanthemum Division of Dustin,  
Oklahoma, Inc.

CAP-6: Docket No. ER84-344-003, Maine  
Yankee Atomic Power Company

CAP-7: Docket No. ER80-363-007, Delmarva  
Power & Light Company

CAP-8: Docket No. ER84-604-000,  
Southwestern Public Service Company

CAP-9: Docket No. ER84-491-000, North County Resource Recovery Associates  
 CAP-10: Docket No. ER81-187-004, Public Service Company of New Mexico  
 CAP-11: Docket No. ER84-236-002, El Paso Electric Company  
 CAP-12: Docket No. ER84-416-000, Nevada Power Company  
 CAP-13: Docket No. ER82-257-000, Kansas Gas and Electric Company  
 CAP-14: Docket No. EL84-30-000, Gulf States Utilities Company  
 CAP-15: Docket No. FA84-6-000, Ohio Edison Company  
 CAP-16: Project No. 8150-000, Burr Courtright  
 CAP-17: Project No. 8151-000, Burr Courtright

#### Consent Miscellaneous Agenda

CAM-1: Docket Nos. RM83-72-001, 002, 003, 004, 005, 006, 007, 008 and 009, First Sales of Pipeline Production Under Section 2(21) of the Natural Gas Policy Act of 1978  
 Docket Nos. RM82-16-001, 002, 003, 004, 005, 006, 007, 008 and 009, First Sales by Affiliates  
 CAM-2: Docket No. RM79-76-222, (Pennsylvania-5), High-Cost Gas Produced From Tight Formations  
 CAM-3: Docket No. RM79-76-217, (Virginia-3), High-Cost Gas Produced From Tight Formations  
 CAM-4: Docket No. GP79-118-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. v. Highland Resources, Inc.

#### Consent Gas Agenda

CAG-1: Docket Nos. RP83-113-013, RP83-113-014, RP83-113-015 and RP83-113-016, Pacific Gas Transmission Company  
 Docket No. RP83-135-004, Pacific Interstate Transmission Company  
 Docket No. RP83-136-003, Pacific Offshore Production Company  
 Docket No. RP84-28-001, Pacific Interstate Offshore Company  
 Docket No. RP83-139-005, El Paso Natural Gas Company  
 Docket Nos. RP81-130-014, RP81-130-015 and RP81-130-016, Transwestern Pipeline Company  
 CAG-2: Omitted  
 CAG-3: Docket No. TA84-2-21-002 (PGA84-2a), Columbia Gas Transmission Corporation  
 CAG-4: Docket No. TA84-2-2-000 (PGA84-2 and IPR84-2), East Tennessee Natural Gas Company  
 CAG-5: Docket No. TA84-1-48-000, ANR Pipeline Company  
 CAG-6: Docket No. FA84-9-001, Northwest Pipeline Corporation  
 CAG-7: Docket No. ST84-847-000, Mississippi Fuel Company  
 CAG-8: Docket No. ST83-76-001, Producer's Gas Company  
 CAG-9: Docket Nos. RI74-188-040 and RI75-21-035, Independent Oil & Gas Association of West Virginia  
 CAG-10: Docket No. CI84-483-001, Pogo Producing Company  
 CAG-11: Docket No. CI80-264-001, Southern Union Gathering Company

CAG-12: Docket Nos. CI84-485-001 and CI84-485-002, Amoco Production Company  
 CAG-13: Docket Nos. G-2500-000, G-2500-001, G-2500-002, G2500-003, G-2500-004 and G-2500-005, Commonwealth Gas Pipeline Corporation and Columbia Gas Transmission Corporation  
 CAG-14: Docket No. CP83-502-014, Tennessee Gas Pipeline Company, A division of Tenneco Inc.  
 CAG-15: Omitted  
 CAG-16: Docket No. CP84-578-000, Panhandle Eastern Pipe Line Company  
 CAG-17: Docket Nos. CP80-86-001, CP80-86-002, CP80-86-003, CP80-86-005 and CP82-494-000, Natural Gas Pipeline Company of America  
 CAG-18: Docket No. CP84-67-001, Pelican Interstate Gas System (Successor to Pelican Interstate Gas Corporation)  
 Docket No. CP84-68-001, Bayou Interstate Pipeline System (Successor to Bayou Interstate Pipeline Corporation)

#### I. Licensed Project Matters

P-1: Reserved

#### II. Electric Rate Matters

ER-1:  
 (A) Docket No. QF84-124-000, Texas Industries, Inc.  
 (B) (1) Docket No. QF83-428-001, Applied Energy Services, Inc.  
 (2) Docket No. QF84-305-000, R.J. Reynolds Tobacco Company  
 (3) Docket No. QF84-381-001, International Paper Company  
 (4) Docket No. QF84-403-000, AES Geismar, Inc.  
 (5) Docket No. QF84-429-000, Pacific Thermochemicals, Inc.  
 (6) Docket No. QF84-435-000, AES Sims Bayou, Inc.  
 (7) Docket No. QF84-423-000, Hemphill Power and Light Company  
 ER-2: Docket No. EC84-20-000, Niagara Mohawk Power Corporation  
 ER-3:  
 (A) Docket Nos. ER82-462-001, ER82-539-000, ER82-734-000, ER82-810-000, ER83-127-000, ER83-540-000, ER83-573-000, ER83-748-000, ER84-163-000, ER884-042-000, ER84-347-000, and ER84-403-000, Portland General Electric Company  
 Docket Nos. ER82-448-001, ER82-715-000, ER83-044-000, ER83-045-000, ER83-046-000, ER83-187-000, ER83-334-000, ER83-541-000, ER83-567-000, ER83-706-000, ER84-040-000, ER84-198-000, and ER84-305-000, Puget Sound Power and Light Company  
 Docket Nos. ER82-618-001, ER82-622-000, ER82-661-000, ER83-241-003, ER83-867-000, and ER83-712-000, Idaho Power Company  
 Docket Nos. ER83-382-001, ER84-026-000, and ER84-156-000, Montana Power Company  
 (B) Docket Nos. ER84-606-000, and ER84-546-000, Pacific Power & Light Company  
 (C) Docket No. ER84-610-000, CP National Corporation  
 ER-4: Docket No. EL84-40-000, United Illuminating Company

ER-5: Docket No. EL84-18-000, Arkansas Power & Light Company

#### Miscellaneous Agenda

M-1: Reserved

#### Gas Agenda

##### I. Pipeline Rate Matters

RP-1: Docket Nos. RP84-16002, RP84-21-003 and RP84-86-001, Locust Ridge Gas Company  
 RP-2: Docket No. RP83-18-000, Texas Eastern Transmission Corporation v. North Alabama Gas District  
 RP-3: Docket No. ST84-630-001, Delhi Gas Pipeline Corporation  
 Docket No. ST84-898-001, PGC Pipeline, a Division of LPC Energy, Inc.

##### II. Producer Matters

CI-1: Reserved

##### III. Pipeline Certificate Matters

CP-1: Docket No. CP84-2-000, Columbia Gas Transmission Corporation  
 CP-2: Docket No. CP83-25-000, Inter-City Minnesota Pipelines Ltd.

**Kenneth F. Plumb,**

Secretary

[FR Doc. 84-26622 Filed 10-3-84; 3:56 pm]

**BILLING CODE 6717-01-M**

4

#### FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 10:00 a.m., Wednesday, October 10, 1984.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 2, 1984.

**James McAfee,**

Associate Secretary of the Board.

[FR Doc. 84-26533 Filed 10-3-84; 9:10 am]

**BILLING CODE 6210-01-M**

5

**MERIT SYSTEMS PROTECTION BOARD**

Addition of Item to the August 27, 1984 Agenda

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Tuesday, July 31, 1984, 49 FR 30626.

**CHANGE IN THE MEETING:** The following items were added to the agenda of the closed meeting of August 27, 1984:

1. *Shuman v. Department of Treasury*, MSPB Docket No. SE04328410073.
2. *Gende v. Department of Justice, Bureau of Prisons*, MSPB Docket No. CH07528410223.

For the Board.

Dated: October 3, 1984.

Stephen E. Manrose,  
Acting Clerk of the Board.

[FR Doc. 84-26610 Filed 10-3-84; 3:21 pm]

BILLING CODE 7400-01-M

6

**MERIT SYSTEMS PROTECTION BOARD**

**TIME AND DATE:** 9:30 a.m., Monday, October 15, 1984.

**PLACE:** Eighth Floor, 1120 Vermont Avenue, NW., Washington, D.C. 20419

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. *Shrider v. U.S. Postal Service*, MSPB Docket No. CH07518310454.
2. *Hall v. U.S. Postal Service*, MSPB Docket No. DA07528210720.
3. *Oxley v. Department of Commerce*, MSPB Docket No. DC03518310771.
4. *Facer v. Department of Energy*, MSPB Docket No. DC03518310289.
5. *Mazzolla v. Department of Labor*, MSPB Docket No. BN03518310086.
6. *Phelps v. Department of Labor*, MSPB Docket No. DE03518210200.
7. *Hataaja v. Department of Labor*, MSPB Docket No. CH03518210565.
8. *Hagan v. U.S. Postal Service*, MSPB Docket No. BN07528310018.
9. *Bogdanowicz v. Department of the Army*, MSPB Docket No. PH07528110587.
10. *Egan v. Department of the Navy*, MSPB Docket No. SE07528310257.
11. *Peterson v. Department of the Navy*, MSPB Docket No. BN07528410010.
12. *Ferby & Jackson v. U.S. Postal Service*, MSPB Docket No. AT07528211068.
13. *West v. Department of Energy*, MSPB Docket No. DA752B8100003.
14. *Brann v. U.S. Postal Service*, MSPB Docket No. NY07528410079.
15. *Walton v. Department of the Navy*, MSPB Docket No. PH07528310654.

16. *Lappin v. Department of Justice*, MSPB Docket No. SF07528090112.

17. *Billings v. Department of Transportation*, MSPB Docket No. CH07528410244.

18. *Doe v. Department of the Air Force*, MSPB Docket No. DA07528310714.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Stephen E. Manrose, Acting Clerk of the Board, (202) 653-7200.

For the Board.

Dated: October 3, 1984.

Stephen E. Manrose,

Acting Clerk of the Board.

[FR Doc. 84-26-611 Filed 10-3-84 3:21 p.m.]

BILLING CODE 7400-01-M

7

**NATIONAL TRANSPORTATION SAFETY BOARD**

[NM-84-30]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 35710, September 11, 1984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, September 18, 1984.

**CHANGE IN MEETING:** A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following items were discussed in open session:

1. *Recommendation* to the National Oceanic and Atmospheric Administration regarding clear air turbulence.
2. *Letter* to the Canadian Aviation Safety Board regarding design problem on passenger service carts.
3. *Recommendation* to the Federal Aviation Administration regarding its Hazardous Inflight Weather Advisory System (HIWAS).
4. *Recommendation* for a public hearing in connection with the investigation of highway hazardous materials accident involving the overturn of a RISS International tractor-semi-trailer at Denver, Colorado, on August 1, 1984.

The following item was deleted from the agenda:

4. *Railroad Accident Report*—Collision of Amtrak Train No. 301 on Illinois Central Gulf Railroad with Marquette Motor Service

Terminals, Inc., Delivery Truck, Wilmington, Illinois, July 28, 1983.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Flemming, (202) 382-6525.

Dated: October 3, 1984.

H. Ray Smith, Jr.,  
Federal Register Liaison Officer.

[FR Doc. 84-26613 Filed 10-3-84; 3:34 pm]

BILLING CODE 7533-01-M

8

**PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL**  
(Northwest Power Planning Council)

**ACTION:** Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

**STATUS:** Open. There will be an Executive Session to discuss pending litigation and personnel matters.

**TIME AND DATE:** October 10, 1984, 10:00 a.m. and October 11, 1984, 9:00 a.m.

**PLACE:** Red Lion Downtowner, Albion-Aspen Room, 1800 Fairview Avenue, Boise, Idaho.

**MATTERS TO BE CONSIDERED:**

1. Annual Business Meeting and Election of Officers.
2. Final Decision on Amendments to the Columbia River Basin Fish and Wildlife Program.
3. Status Report on Installation of Fish Passage Facilities in the Yakima River Basin.
4. Presentation of BPA Analysis of WNP 1 & 3.
5. Presentation of Northwest Conservation Act Coalition's Analysis of WNP 1 & 3.
6. Staff Presentation of Issue Paper on Possible Exemptions to Council's Model Conservation Standards.
7. Council Business.

**Note.**—Public comment will follow each agenda item; however, the comment period on the proposed fish and wildlife amendments (Agenda Item 2) ended August 10, 1984. For that reason, no additional comments will be taken at this meeting on those proposals.

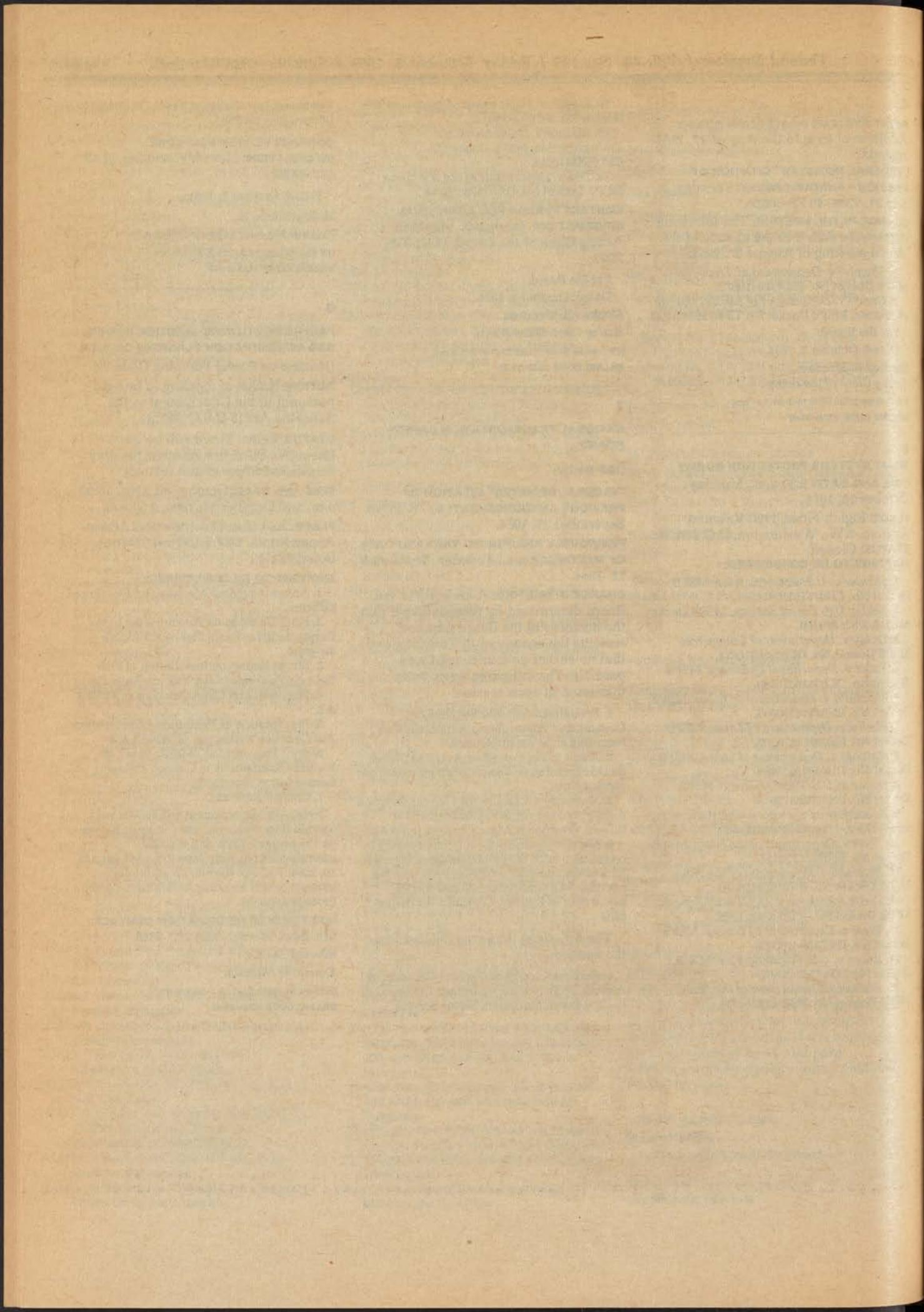
**FOR FURTHER INFORMATION CONTACT:** Ms. Bess Wong, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-28545 Filed 10-3-84; 9:40 am]

BILLING CODE 0000-00-M



# Federal Register

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Friday  
October 5, 1984

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## Part II

### Department of Labor

Employment Standards Administration,  
Wage and Hour Division

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**Minimum Wages for Federal and  
Federally Assisted Construction; General  
Wage Determination Decisions; Notice**

## DEPARTMENT OF LABOR

Employment Standards  
Administration, Wage and Hour  
DivisionMinimum Wages for Federal and  
Federally Assisted Construction;  
General Wage Determination  
Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9-83, 48 FR 35736 (1983), and 6-84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas  
Decisions to General Wage  
Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6-84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage  
Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

Arizona: AZ83-5102 .....	Mar. 4, 1983.
Colorado:	
CO83-5113 .....	July 15, 1983.
CO84-5003 .....	Feb. 24, 1984.
District of Columbia: DC84-3009 .....	Apr. 6, 1984.
Florida: FL83-1016 .....	Apr. 1, 1983.
Maryland: MD81-3052 .....	Aug. 14, 1981.
Massachusetts:	
MA84-3007 .....	Apr. 6, 1984.
MA84-3008 .....	Mar. 30, 1984.
MA84-3010 .....	Apr. 6, 1984.
New Jersey: NJ84-3020 .....	July 27, 1984.
New York: NY83-3018 .....	May 20, 1984.
Wisconsin:	
WI83-2041 .....	May 13, 1983.
WI83-2068 .....	Sept. 2, 1983.
WI83-2078 .....	Oct. 7, 1983.

Supersedeas Decisions to General Wage  
Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

California: CA84-5001 (CA84-5022) .....	Mar. 30, 1984.
Louisiana: LA84-4024 (LA84-4059) .....	Apr. 20, 1984.
Missouri:	
MO83-4086 (MO84-4060) .....	Jan. 6, 1984.
MO84-4095 (MO84-4098) .....	Jan. 13, 1984.
MO84-4095 (MO84-4097) .....	Do.
Pennsylvania:	
PA81-3068 (PA84-3037) .....	Sept. 25, 1981.
PA81-3090 (PA84-3037) .....	Dec. 18, 1981.
PA81-3073 (PA84-3037) .....	Oct. 2, 1981.
PA81-3076 (PA84-3037) .....	Oct. 9, 1981.
PA81-3081 (PA84-3037) .....	Oct. 23, 1981.
Texas:	
TX83-4079 (TX84-4057) .....	Oct. 21, 1983.
TX80-4088 (TX84-4058) .....	Nov. 7, 1980.

Signed at Washington, D.C., this 28th day of September 1984.

James L. Valin,  
Assistant Administrator.

BILLING CODE 4510-27-M



MODIFICATIONS P. 4

DECISION NO. MA84-3010 MOD. NO. 2 (49 FR 13809 - April 6, 1984)	Basic Hourly Rates	Fringe Benefits
Essex, Suffolk, Middlesex, Norfolk, Bristol, Plymouth, Barnstable, Dukes, Nantucket Counties, Massachusetts	16.00	4.75+
Area 8	15.75	3%
Area 9	19.23	2.25+
Area 11	15.39	17.5%
Ironworkers:	18.25	6.31
Area 1	18.05	4.25
Area 2		
Area 3		
LABORERS (WRECKING):		
Class I	10.50	2.80
Class II	13.60	2.80
Class III	13.70	2.80
Class IV	13.85	2.80
Class V	14.10	2.80
Class VI	14.35	2.80
LINE CONSTRUCTION:		
Lineman	18.00	2.60+
		44.375%
Equipment Operators & Cabmen	15.30	2.60+
		44.375%
Driver Groundmen	14.40	2.60+
		44.375%
Groundman	9.90	2.60+
		44.375%
Marble, Tile & Terrazzo Workers	17.80	3.45
PAINTERS:		
Sign Painters (Statewide)	13.44	2.05
Area 1:		
New Construction:		
Brush; Taper	17.45	5.77
Spray; Sandblast	18.45	5.77
Steel	20.50	5.77
REPAINT:		
Brush; Taper	15.72	5.77
Spray; Sandblast	16.72	5.77
Steel	20.50	5.77
Area 2:		
Brush; Taper; Paper-hanging	17.31	4.78
Sandblasting; swing stage	18.31	4.78
Spray; Steel	18.91	4.78
Repair up to 3 stories (including basements and sub-basements) and new housing 2 stories and less:		

MODIFICATIONS P. 3

DECISION NO. MA84-3008 - MOD. #2 (49 FR 12889 - March 30, 1984)	Basic Hourly Rates	Fringe Benefits
Worcester County, Mass.	13.67	3.55
Area 1	12.06	3.55
Area 2	15.66	5.09
TERRAZZO FINISHERS	18.50	1.50
CHANGE:		
REPAINT Residential SHEET METAL WORKERS		
Area 1	17.98	2.92
Area 2	18.16	3.691
ASBESTOS WORKERS		
Area 1	17.46	4.42
Area 2	17.05	3.55
Area 3	15.90	4.30+
Area 4	16.50	3%
Area 5	18.05	1.81+
Area 6		11%
Area 7		4.25
IRONWORKERS		
Wrecking:		
Group 1	10.50	2.80
Group 2	13.60	2.80
Group 3	13.70	2.80
Group 4	13.85	2.80
Group 5	14.10	2.80
Group 6	14.35	2.80
LINE CONSTRUCTION		
Linemen	18.00	2.60+
		4.375+d
Equipment Operator	15.30	2.60+
		4.375+d
Driver Groundman	14.40	2.60+
		4.375+d
MARBLE, TILE & TERRAZZO WORKERS		
Area 1	17.80	3.45
PAINTERS:		
Areas 1, 2, and 3: Sign Painters, Erectors and Fabricators	13.44	2.05
Area 1:		
Brush and Tapers	13.86	3.09
Spray & Sandblasting	17.43	3.09
Swing & chair work and steel riding under 40 ft.	14.05	3.09
Swing and chair work and steel riding 40 ft. and over	14.36	3.09
Area 3:		
Brush	16.08	3.55
Wall Coverings	16.33	3.55
Spray; Sandblasting	18.08	3.55
Steel	18.08	3.55

DECISION NO. MA84-3010 MOD. NO. 2 (49 FR 13809 - April 6, 1984)

REPAINT Residential SHEET METAL WORKERS Area 2 TERRAZZO FINISHERS

DECISION NO. MA84-3008 - MOD. #2 (49 FR 12889 - March 30, 1984) Worcester County, Mass.

CHANGE: REPAINT Residential SHEET METAL WORKERS Area 1

MODIFICATIONS P. 6

DECISION NO. / MOD. #	Effective Dates	Basic Hourly Rates	Fringe Benefits
DECISION NO. NJ84-3020 - MOD. #1 (49 FR 30280 - July 27, 1984)	Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean and Salem Counties, New Jersey		
OMIT:			
ROOFERS: Zone 1: All rates and classifications			
ADD:			
ROOFERS: ZONE 1: Shingle, slate and tile Mechanic II for shingle, slate or tile work - handles and transports all materials, tools and equipment; clean-up debris	13.92 2.25	2.25	
All other work Mechanic II for all other work - handles and transports all materials, tools and equipment; clean-up debris	6.25 2.25 19.57 2.93+p	2.25	
FOOTNOTE: P. Paid Holiday: Election Day.			
DECISION NO. NY83-3018 - MOD. #3 (48 FR 22870 - May 20, 1983)	DUTCHESS, ORANGE, SULLIVAN & ULSTER COUNTIES, NEW YORK		
CHANGE:			
LABORERS (BUILDING): ULSTER; ORANGE; SULLIVAN: Class 1 Class 2 Class 3		15.55 3.45 13.80 3.45 14.55 3.45	

MODIFICATIONS P. 5

DECISION NO. MA83-3010 - Mod. No. 2, CONT'D:

DECISION NO. / MOD. #	Effective Dates	Basic Hourly Rates	Fringe Benefits
PAINTERS: AREA 2 (Cont'd) Brush; Taper; Paperhanging Sandblasting; Swing stage Spray; Sandblast; Steel		14.71 15.56 15.99	4.78 4.78 4.78
AREA 3: Brush Wall Coverings Spray; Sandblast Steel Repaint Residentialq		16.08 16.33 18.08 18.08 13.67 12.06	3.55 3.55 3.55 3.55 3.55 3.55
STEAMFITTERS: AREA 1: Plumbers: Repairs; Replacing defective fixtures, appliances and defective piping, valves or fittings serving same (which means the fixtures and appliances in a single family house, one apartment, or not more than one group of fixtures in same building that tie into the same soil or waste stack. Replacing of pipe limited to piping in the same immediate area of items served by the piping.)		18.03	5.75
Area 8: Plumbers & Steamfitters Sheet metal Workers Area 2		18.64 14.38	3.48 3.65+
Terrazzo Finishers		18.50	1.50

STATE: California

COUNTIES: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo and Yuba  
 DECISION NUMBER: CA84-5022  
 DTPE: Date of Publication  
 Supersedes Decision No. CA84-5001 dated March 30, 1984, in 49 FR 12873.  
 DESCRIPTION OF WORK: Building; Heavy (excluding Water Well Drilling); Highway; and Residential projects (excluding Alpine, Butte, Colusa, Fresno, Glenn, Kings, Lake, Lassen, Madera, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Stanislaus, Tehama, Trinity Counties). This decision does NOT include the installation of solar energy systems.  
 \*Excludes Tulare County building construction only.

ASBESTOS WORKERS

BOILERMAKERS:  
 Boilmakers  
 Boilmaker-Blacksmith,  
 storage tank erection  
 Boilmaker-Blacksmith,  
 storage tank repair

BRICKLAYERS: Stonemasons:

Area 1  
 Area 2  
 Area 3  
 Area 4  
 Area 5  
 Area 6  
 Area 7

BRICK TENDERS:

Area 1  
 Area 2  
 Area 3  
 Area 4  
 Area 5  
 Area 6  
 Area 7  
 Area 8  
 Area 9 (Residential con-  
 struction 2 stories or  
 less)

CARPENTERS:

Area 1:  
 Carpenters  
 Hardwood floorlayers;  
 Shinglers; Power Saw  
 Operators; Saw  
 Filers; Shinglers;  
 Steel Scaffold Erec-  
 tion & Steel Shoring  
 Millwrights  
 Piledrivers

Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
\$23.85	\$5.61	\$17.64	\$6.485
21.60	4.25	17.79	6.455
17.25	4.00	18.54	7.455
16.05	4.00	19.38	8.885
19.75	7.25	11.80	6.205
19.90	4.95	12.00	6.205
17.65	3.30	16.02	6.18
16.53	2.82		
19.27	3.53		
20.10	3.87		
17.57	3.89		
13.55	3.46		
15.99	6.18		
16.24	4.91		
16.24	4.91		
17.24	4.91		
14.19	6.10		
15.55	4.45		
16.05	4.45		
13.55	4.96		
20.27	6.455		
20.42	6.455		
20.27	7.455		
19.38	8.885		

CARPENTERS (Cont'd):

Area 2:	Area 3:	Area 4:	Area 5:	Area 6:	Area 7:	Area 8:	Area 9:
Hardwood Floorlayers; Power Saw Operator; Saw Filers; Shing- lers; Steel Scaf- fold Erectors & Steel Shoring	Millwrights Piledrivers	Area 3 (Residential) Area 4 (Residential)	Cement Masons Swing or Slip Form Scaffolds; Mastic, Magnesite, gypsum, epoxy, polyester, resin and all compos- ition	DIVERS: Divers Diver Tender Assistant Tender	Drywall Installer/La- ther Drywall Stocker, Scrapper & Clean-up	Drywall Installer/La- ther Drywall Stocker, Scrapper & Clean-up	Area 1: Drywall Installer/La- ther Area 2: Drywall Installer/La- ther Area 3: Drywall Stocker, Scrapper & Clean-up

ELECTRICIANS (Cont'd):

Area 2 (Cont'd):	Area 3:	Area 4:	Area 5:	Area 6:	Area 7:	Area 8:	Area 9:
Cable Splicers Residential Electrici- cian Area 3	Area 4: Building contracts over \$100,000: Electricians Cable Splicers	Building contracts \$100,000 or less: Electricians	Cable Splicers	Residential Electrici- cian Area 5: Electrician	Cable Splicer	Area 6: Electricians	Cable Splicers Cable Splicers

ELECTRICIANS (Cont'd):

Area 9 (Cont'd):	Area 10:	Area 11:	Area 12:	Area 13:	Area 14:	Area 15:	ELEVATOR CONSTRUCTORS:
Residential Electrici- cian	Area 10: Electrician	Area 11: Building contracts over \$100,000: Electricians	Area 12: Electricians	Area 13: Electrician	Area 14: Electrician	Area 15	Mechanics Helpers

Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
\$17.39	\$3.38	16.01	4.41
12.30	3.35	20.03	5.15
18.89	7.68	22.53	5.15
21.25	7.68	16.03	3.65
9.45	4.12	18.03	3.65
	+4%	10.25	3.65
		25.16	5.45
		27.16	5.45
		17.00	5.44
		18.36	5.44
		18.40	4.06
		20.24	4.06
		10.00	1.01
		22.85	4.74
		25.14	4.74
		15.37	4.45
		16.91	4.45
			3.25%
			4.45
			3.25%

ELECTRICIANS (Cont'd):

Area 9 (Cont'd):	Area 10:	Area 11:	Area 12:	Area 13:	Area 14:	Area 15:	ELEVATOR CONSTRUCTORS:
Residential Electrici- cian	Area 10: Electrician	Area 11: Building contracts over \$100,000: Electricians	Area 12: Electricians	Area 13: Electrician	Area 14: Electrician	Area 15	Mechanics Helpers

ELECTRICIANS (Cont'd):

Area 9 (Cont'd):	Area 10:	Area 11:	Area 12:	Area 13:	Area 14:	Area 15:	ELEVATOR CONSTRUCTORS:
Residential Electrici- cian	Area 10: Electrician	Area 11: Building contracts over \$100,000: Electricians	Area 12: Electricians	Area 13: Electrician	Area 14: Electrician	Area 15	Mechanics Helpers

Basic Hourly Rates	Fringe Benefits
\$20.92	\$5.66
15.75	6.44
10.00	2.72
9.82	1.70
18.83	3.89
13.58	2.04
20.06	6.11
17.16	8.78
18.05	8.78
18.87	5.45
22.64	5.45
25.16	5.45
27.16	5.45
20.03	3.00
18.11	3.00
16.35	3.00
15.61	2.30
13.66	2.30
13.66	2.30
12.84	2.30
17.38	4.21
18.20	4.21

Basic Hourly Rates	Fringe Benefits
\$14.86	\$4.24
17.83	4.24
19.81	4.24
22.29	4.24
11.60	2.75
15.47	2.75
17.02	2.75
14.17	6.30
18.89	7.48
21.25	7.48
14.68	4.09
22.30	4.09
22.30	4.09
12.57	4.41
15.71	4.41
17.28	4.41
18.42	7.29
22.56	7.29
22.10	7.29

Basic Hourly Rates	Fringe Benefits
\$16.14	\$4.75
18.16	4.75
20.18	4.75
22.20	4.75
21.25	5.42
22.50	5.42
25.00	5.42
13.60	4.66
15.30	5.04
17.00	5.41
18.36	5.41
22.07	7.26
25.965	7.26
29.21	7.26
18.70	5.38
22.00	5.75
24.75	5.75
18.28	4.74
20.57	4.74
22.85	4.74
25.14	4.74

Basic Hourly Rates	Fringe Benefits
\$20.75	\$7.15
14.81	4.82
13.39	4.60
14.14	4.60
13.79	4.60
15.22	1.59
15.72	1.59
16.20	2.57
17.20	2.57
16.70	2.57
21.23	4.70
22.03	4.70
17.32	4.70
21.23	4.70
22.03	4.70
17.32	4.70
17.45	1.95
17.95	1.95
17.70	1.95
18.20	1.95
20.43	4.68
21.43	4.68
21.43	4.68
20.93	4.68

GLAZIERS:  
 Area 1  
 Area 2  
 Area 3 (Residential)  
 Area 4 (Residential)  
 Area 5  
 Area 6  
 Area 7

IRONWORKERS:  
 Fence Erectors  
 Reinforcing, Ornamental,  
 and Structural

LINE CONSTRUCTION:  
 Area 1:  
 Groundman

Line Equipment Operator  
 Lineman

Cable Splicers  
 Area 2 (Zone 1):  
 Group 1

Group 2  
 Group 3  
 Group 4  
 Group 5  
 Group 6  
 Group 7

Zone Differential (add  
 to Zone 1 rates):  
 Zone 2 - \$2.40  
 Zone 3 - 3.15  
 Zone 4 - 3.90  
 Zone 5 - 5.15

Area 3:  
 Groundmen  
 Linemen

LINE CONSTRUCTION (Contd.)  
 Area 10:  
 Groundmen

Equipment Operators  
 Linemen  
 Cable Splicers

Area 11:  
 Groundmen  
 Line Equipment Oper-  
 ators

Linemen  
 Area 12:  
 Groundman

Heavy Equipment Oper-  
 ators  
 Linemen  
 Cable Splicers

Area 13:  
 Groundmen  
 Linemen; Technicians

Cable Splicers  
 Area 14:  
 Groundmen

Linemen; Line Equip-  
 ment Operators  
 Cable Splicers

Area 15:  
 Groundmen  
 Heavy Equipment Oper-  
 ator

Linemen  
 Cable Splicers

MARBLE SETTERS  
 MARBLE FINISHERS:  
 Area 1  
 PAINTERS:  
 Area 1:  
 Area 2:  
 Area 3:  
 Area 4:  
 Area 5:  
 Area 6:  
 Area 7:

Sandblaster; Scaf-  
 fold; Sheetrock;  
 Structural Steel;  
 Swing Stage; Taper

Area 2:  
 Brush; Roller; Taper  
 Brooma Operators;  
 Paperhangers; Sand-  
 blasters; Spray;  
 Structural Steel

Area 3:  
 Brush  
 Hazardous Coating  
 Sandblasting; Spray;  
 Taping

Area 4:  
 Brush  
 Tapers  
 Residential Painter

Area 5:  
 Brush  
 Tapers  
 Residential Painter

Area 6:  
 Brush and Roller  
 Paperhanger; Sand-  
 blaster; Spray;  
 Taper

Area 7:  
 Brush - steel; Brush-  
 Swing Stage up to  
 40 ft.  
 Spray - steel; Spray-  
 Swing Stage up to  
 40 ft.

Area 8:  
 Brush  
 Drywall Finisher  
 Paperhangers  
 Sandblasting; Spray;  
 Steam Cleaning

Job Title / Area	Basic Hourly Rates	Fringe Benefits						
<b>PAINTERS (Cont'd):</b>								
Area 8:								
Brush; Pot Tenders;	\$9.80	\$1.35	\$20.18	\$7.65	\$19.10	\$4.00	\$19.80	\$7.15
Rollers			16.06	5.91				
Sandblaster; Spray;			16.63	5.44				
Structural Steel;			17.92	8.25				
Swing Stage; Tapers	10.30	1.35	16.55	6.94				
Area 9:			18.81	3.61				
Brush	19.79	5.38	14.30	7.45				
Facehangers and Spray								
(coating)	20.54	5.38	17.95	5.15				
Spray	20.29	5.38	16.85	5.01				
Tapers (paint)	20.18	5.38	19.09	4.93				
Area 10:			17.50	4.05				
Brush and Roller	12.00	2.41	14.95	2.70				
Blasters; Spray;			26.42	5.88				
Paperhangers; Sand-			25.86	7.34				
blasters; Spray;			19.72	6.71				
Structural Steel;			26.34	2.43				
Swing Stage; Tapers			26.64	8.30				
PARKING LOT STRIPING WORK			22.03	6.35				
and/or HIGHWAY MARKERS:			26.40	5.84				
Area 1:			16.47	9.45				
Traffic Delineating	14.48	b+1.65	28.97	11.00				
Device Applicator			23.36	6.47				
Striper; Traffic								
Surface Sand-								
blaster; Wheel	13.95	b+1.65						
Stop Installer								
Slurry Seal Oper-								
ation:								
Mixer Operator	13.95	b+1.65						
Applicator Oper-								
ator; Shuttle-								
man and Squee-								
gee Man	12.37	b+1.65						
Top Man	10.39	b+1.65						
Area 2:								
Slurry Seal Operator:								
Applicator Operator	10.60	b+1.55						
Mixer Operator	12.37	b+1.55						
Squeegee Man	10.60	b+1.55						
Top Man	8.91	b+1.55						
Striper	13.57	b+1.55						
Traffic Delineating								
Device Applicator;								
Traffic Surface								
Sandblaster; Wheel								
Stop Installer	12.37	b+1.55						
PLASTERERS:								
Area 1	19.63	5.88						
Area 2								
Area 3								
Area 4								
Area 5								
Area 6								
Area 7								
Area 8								
Area 9								
Area 10								
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Area 151								

LABORERS:	Basic Hourly Rates	AREA 1	AREA 2	AREA 3
TUNNEL & SHAFT LABORERS:				
Group 1	\$18.59			
Group 2	18.14			
Group 3	17.88			
Group 4	17.71			
LABORERS:				
Group 1	15.56	14.56		12.11
Group 1-a	15.785	14.785		12.31
Group 1-b	*	*		*
Group 1-c	15.61	14.61		12.16
Group 1-d	15.81	14.81		12.36
Group 1-e	16.11	15.11		12.59
Group 1-f	16.145	15.145		12.62
Group 1-g **				
Group 2	15.41	14.41		11.98
Group 3	15.31	14.31		11.88
Group 4	9.00	9.00		8.46
Gunite Laborers:				
Group 1	16.02	15.02		12.52
Group 2	15.43	14.43		12.00
Group 3	15.31	14.31		11.88
Wrecking Work:				
Group 1	15.56	14.56		12.11
Group 2	15.41	14.41		11.98
Group 3	15.31	14.31		11.88

POWER EQUIPMENT OPERATORS*:	AREA 1	AREA 2	AREA 3	AREA 4
Group 1	\$ 14.96	\$ 16.96		
Group 2	15.49	17.49		
Group 3	15.80	17.80		
Group 4	16.61	18.61		
Group 5	16.92	18.92		
Group 6	17.14	19.14		
Group 7	17.38	19.38		
Group 8	18.03	20.03		
Group 9	18.35	20.35		
Group 10	18.69	20.69		
Group 10-A	18.97	20.97		
Group 11	19.12	21.12		
Group 11-A	20.84	22.84		
Group 11-B	21.25	23.25		
Group 11-C	21.73	23.73		
FRINGE BENEFITS:				
\$8.98.				
*Residential Construction 3 stories and under to be paid the Area 1 rate.				
DREDGING - SCHEDULE I Clamshell and Dipper Dredging (New Construction):	AREA 1	AREA 2	AREA 3	AREA 4
Group 1	\$14.30	\$15.63	\$16.02	\$16.42
Group 2	15.65	16.98	17.37	17.77
Group 3	17.01	18.34	18.73	19.13
Group 4	19.68	21.01	21.40	21.80
Group 4-A	20.08	21.41	21.80	22.20
DREDGING - SCHEDULE II Hydraulic Suction Dredging and all other Dredging:				
Group A-1	14.09	15.35	15.71	16.09
Group A-2	15.45	16.76	17.16	17.54
Group A-3	16.36	17.72	18.12	18.50
Group A-4	17.60	18.98	19.35	19.74
FRINGE BENEFITS:				
\$8.56				

POWER EQUIPMENT OPERATORS:

DREDGING (Cont'd)  
 TOW BOATS:  
 Work on self-propelled vessels (except Skiffs powered by outboard motors) engaged in towing vessels and water borne craft or in the transportation by water of personnel, materials, equipment, and supplies;  
 Deckhand/Mechanic/Operator  
 Watch Engineer  
 Work on self-propelled vessels);  
 Boat Operators

Basic Hourly Rates	Fringe Benefits
10.86	3.37
12.17	3.86
12.17	3.86
15.03	8.98
15.55	8.98
15.85	8.98
16.67	8.98
16.99	8.98
17.22	8.98
17.44	8.98
18.10	8.98
18.92	8.98
19.19	8.98
20.90	8.98
15.74	8.98
16.30	8.98
17.86	8.98
18.06	8.98
18.54	8.98
19.70	8.98
19.94	8.98
20.40	8.98
20.84	8.98
22.42	8.98

TRUCK DRIVERS:

Basic Hourly Rates	Fringe Benefits
16.30	6.54
16.38	6.54
16.40	6.54
16.41	6.54
16.43	6.54
16.45	6.54
16.47	6.54
16.48	6.54
16.50	6.54
16.51	6.54
16.55	6.54
16.56	6.54
16.57	6.54
16.60	6.54
16.61	6.54
16.62	6.54
16.64	6.54
16.65	6.54
16.66	6.54
16.71	6.54
16.74	6.54
16.75	6.54
16.84	6.54
16.85	6.54
16.85	6.54
16.88	6.54
16.90	6.54
16.94	6.54
16.95	6.54
16.98	6.54
17.04	6.54
16.97	6.54
17.19	6.54
17.29	6.54
17.34	6.54
17.49	6.54
17.64	6.54

STEEL ERECTION:

Basic Hourly Rates	Fringe Benefits
15.74	8.98
16.30	8.98
17.86	8.98
18.06	8.98
18.54	8.98
19.70	8.98
19.94	8.98
20.40	8.98
20.84	8.98
22.42	8.98

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for over 5 years' service, and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day  
 b. Employer contributes \$.32 per hour to Holiday Fund plus \$.22 per hour to Vacation Fund for the first year of employment; 1 year but less than 5 years \$.42 per hour to Vacation Fund; 5 years but less than 10 years \$.60 per hour to Vacation Fund; over 10 years \$.80 per hour to Vacation Fund

AREA DESCRIPTIONS

BRICKLAYERS; STONEMASONS:

Area 1: Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Siskiyou, Solano, Sonoma, and Trinity Cos.  
 Area 2: Alameda and Contra Costa Counties  
 Area 3: Fresno, Kings, Madera, Mariposa, and Merced Counties  
 Area 4: Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Sutter, Tehama, Yolo, and Yuba Counties  
 Area 5: Monterey and Santa Cruz Counties  
 Area 6: San Benito and Santa Clara Counties  
 Area 7: Alpine, Amador, Calaveras, San Joaquin, Stanislaus, and Tuolumne Counties

BRICK TENDERS:

Area 1: Amador, El Dorado, Nevada, Placer, Sacramento, and Yolo Cos.  
 Area 2: San Francisco and San Mateo Counties  
 Area 3: Fresno, Kings, Madera, and Tulare Counties  
 Area 4: Remaining Counties  
 Area 5: Marin County  
 Area 6: Alameda and Contra Costa Counties  
 Area 7: Santa Cruz County  
 Area 8: San Benito and Santa Clara Counties  
 Area 9: (Residential construction of 2 stories or less) Monterey and Napa Counties

CARPENTERS:

Area 1: Alameda, Contra Costa, Marin, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Solano and Sonoma Counties  
 Area 2: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Monterey, Nevada, Placer, Plumas, Sacramento, San Joaquin, Santa Cruz, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo and Yuba Counties  
 Area 3: (Residential) Calaveras, Mariposa and Merced Counties  
 Area 4: (Residential) Del Norte and Humboldt Counties

## AREA DESCRIPTIONS

## DRYWALL INSTALLERS/LATHERS:

- Area 1: Alameda, Contra Costa, Marin, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma Counties  
 Area 2: Remainder of Counties

## ELECTRICIANS:

- Area 1: Alameda County  
 Area 2: Alpine, Amador, Colusa, El Dorado, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo and Yuba Counties

- Area 3: Butte and Glenn Counties; Lassen County (excluding the Sierra Army Depot (Hering); Modoc, Plumas, Shasta, Siskiyou, Tehama and Trinity Counties)  
 Area 4: Calaveras and San Joaquin Counties  
 Area 5: Contra Costa County  
 Area 6: Del Norte and Humboldt Counties  
 Area 7: Fresno, Kings, Madera, and Tulare Counties  
 Area 8: Lake, Marin, Mendocino, and Sonoma Counties  
 Area 9: Mariposa, Merced, Stanislaus, and Tuolumne Counties  
 Area 10: Monterey, San Benito, and Santa Cruz Counties  
 Area 11: Napa and Solano Counties  
 Area 12: Santa Clara County  
 Area 13: San Francisco County  
 Area 14: San Mateo County  
 Area 15: Sierra Army Depot (Hering) in Lassen Counties

## GLAZIERS:

- Area 1: Alameda, Contra Costa, Monterey, Napa, San Benito, Santa Clara, and Santa Cruz Counties  
 Area 2: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Tuolumne, Yolo, and Yuba Counties  
 Area 3: (Residential) Sutter and Yuba Counties  
 Area 4: (Residential) Amador, Calaveras, El Dorado, Nevada, Placer, Sacramento, San Joaquin, Solano, Tuolumne, and Yolo Counties  
 Area 5: Fresno, Madera, Mariposa, Merced, Kings, and Tulare Counties  
 Area 6: Del Norte and Humboldt Counties  
 Area 7: Lake, Marin, Mendocino, San Francisco, San Mateo, and Sonoma Counties

## LINE CONSTRUCTION:

- Area 1: Contra Costa County  
 Area 2: Del Norte, Modoc, and Siskiyou Counties:  
 Group 1: Cable Splicer, Leadman Pole Sprayer  
 Group 2: Lineman, Pole Sprayer, Heavy Line Equipment Man, Certified Lineman Welder  
 \*Group 3: Tree Trimmer  
 Group 4: Line Equipment Man  
 Group 5: Head Groundman, Powderman, Jackhammer Man  
 \*Group 6: Head Groundman (Chipper)  
 Group 7: Groundman  
 \*Groups 3 and 6 receive BASE RATE (ZONE 1) ONLY (no Zone Differential)

## AREA DESCRIPTIONS (Cont'd)

## LINE CONSTRUCTION: (Cont'd)

## Area 2: (Cont'd)

- Zone Definitions: Zone 1: 0 to 3 miles radius from the geographical center of Alturos and Yreka, California  
 Zone 2: 3 to 20 miles radius  
 Zone 3: 20 to 35 miles radius  
 Zone 4: 35 to 50 miles radius  
 Zone 5: Over 50 miles radius

BASE RATE (ZONE 1) is paid when working out of employer's Permanent Shop

- Area 3: Fresno, Kings, Madera, and Tulare Counties  
 Area 4: Calaveras and San Joaquin Counties  
 Area 5: Mariposa, Merced, Stanislaus, and Tuolumne Counties  
 Area 6: Monterey, San Benito, and Santa Cruz Counties  
 Area 7: Napa and Solano Counties  
 Area 8: Butte, Glenn, Lassen, Plumas, Shasta, Tehama, and Trinity Cos.  
 Area 9: Alameda County  
 Area 10: Amador, Colusa, Sacramento, Sutter, Yolo, and Yuba Counties;  
 Alpine, El Dorado, Nevada, Placer, and Sierra Counties (those portions west of the Main Sierra Mountain Watershed)  
 Area 11: San Mateo County  
 Area 12: Humboldt County  
 Area 13: San Francisco County  
 Area 14: Santa Clara County  
 Area 15: Lake, Marin, Mendocino, and Sonoma Counties

## MARBLE FINISHERS:

- Area 1: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba Counties

## PAINTERS:

- Area 1: Alpine, Amador, Calaveras, and San Joaquin Counties  
 Area 2: Fresno, Kings, Madera, and Tulare Counties  
 Area 3: Mariposa, Merced, Stanislaus, and Tuolumne Counties  
 Area 4: San Benito, San Mateo, and Santa Clara Counties  
 Area 5: Monterey and Santa Cruz Counties  
 Area 6: Lassen County (that portion that lies eastward of Highway #395, northward to and including Honey Lake); Lake Tahoe Area  
 Area 7: Lake, Marin, Mendocino, San Francisco, and Sonoma Counties  
 Area 8: Butte, Colusa, and Glenn Counties; Lassen County (excluding the extreme SE corner); Modoc, Plumas, Shasta, Siskiyou, Sutter, Tehama, Trinity, and Yuba Counties  
 Area 9: Alameda, Contra Costa, El Dorado, Napa, Nevada, Placer, Sacramento, Sierra, Solano, and Yolo Counties (excluding portions of Counties in the Lake Tahoe Area)  
 Area 10: Del Norte and Humboldt Counties

## AREA DESCRIPTIONS (Cont'd)

## PARKING LOT STRIPING WORK and/or HIGHWAY MARKERS:

- Area 1: Fresno, Kings, and Tulare Counties
- Area 2: Remaining Counties

## PLASTERERS:

- Area 1: Alameda and Contra Costa Counties
- Area 2: San Francisco and San Mateo Counties
- Area 3: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo and Yuba Cos. and Sonoma Counties
- Area 4: Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, Solano, and Santa Clara Counties
- Area 5: San Benito, Santa Clara, and Santa Cruz Counties
- Area 6: Fresno, Kings, Madera, and Tulare Counties
- Area 7: Monterey County
- Area 8: Mariposa, Merced, Stanislaus, and Tuolumne Counties

## PLASTERERS' TENDERS:

- Area 1: Alameda and Contra Costa Counties
- Area 2: Fresno, Kings, Madera, and Tulare Counties
- Area 3: San Francisco and San Mateo Counties
- Area 4: Monterey County
- Area 5: Napa County

## PLUMBERS:

- Area 1: Alameda County
- Area 2: Contra Costa County

## PLUMBERS; STEAMFITTERS:

- Area 1: Amador County (northern half); El Dorado, Nevada, Sacramento, and Yolo Counties (excluding Lake Tahoe Area), Sierra County
- Area 2: Lake Tahoe Area
- Area 3: Marin, Mendocino, San Francisco, and Sonoma Counties
- Area 4: Alpine County; Amador County (southern portion); Butte, Calaveras, Colusa, Fresno, Glenn, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Monterey, Plumas, San Joaquin, Santa Cruz, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba Counties
- Area 5: Lake, Napa, and Solano Counties
- Area 6: Del Norte and Humboldt Counties
- Area 7: San Benito and Santa Clara Counties
- Area 8: San Mateo County

## ROOFERS:

- Area 1: Alameda and Contra Costa Counties
- Area 2: Alpine, Calaveras, Mariposa, Merced, San Joaquin, Stanislaus, and Tuolumne Counties

## AREA DESCRIPTIONS (Cont'd)

## ROOFERS: (Cont'd)

- Area 3: Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Placer, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, and Yuba Counties
- Area 4: Fresno, Kings, Madera, and Tulare Counties
- Area 5: Lake, Marin, Mendocino, Napa, Solano, and Sonoma Counties
- Area 6: Monterey and Santa Cruz Counties
- Area 7: San Francisco and San Mateo Counties
- Area 8: Amador, Sacramento and Yolo Counties
- Area 9: San Benito and Santa Clara Counties

## SHEET METAL WORKERS:

- Area 1: Alameda and Contra Costa Counties
- Area 2: Alpine, Calaveras, and San Joaquin Counties
- Area 3: Amador, Butte, Colusa, El Dorado, Glenn, Modoc, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sutter, Tehama, Yolo, and Yuba Counties
- Area 4: Monterey and San Benito Counties
- Area 5: Del Norte, Humboldt and Trinity Counties
- Area 6: San Mateo County
- Area 7: Fresno, Kings and Madera Counties
- Area 8: San Francisco County
- Area 9: Lake, Marin, Mendocino, Napa, Solano and Sonoma Counties
- Area 10: Santa Cruz County
- Area 11: Santa Clara County

## SOFT FLOOR LAYERS:

- Area 1: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, and Lassen Counties (excluding Honey Lake Area); Merced County (east of San Joaquin River); Plumas, Sacramento, San Joaquin, Shasta, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba Counties; El Dorado, Nevada, Placer, and Sierra Counties (those portions excluding Lake Tahoe Area)
- Area 2: Honey Lake Area and Lake Tahoe Area
- Area 3: Lake, Marin, Mendocino, Merced, Monterey, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz and Sonoma Counties
- Area 4: Del Norte and Humboldt Counties
- Area 5: Alameda, Contra Costa, Napa and Solano Counties

## SPRINKLER FITTERS:

- Area 1: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties
- Area 2: Remaining Counties

## STEAMFITTERS:

- Area 1: Alameda and Contra Costa Counties

## AREA DESCRIPTIONS (Cont'd)

## TERRAZZO WORKERS:

Area 1: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Siskiyou, Solano, Sonoma, and Trinity Counties

## TILE SETTERS:

Area 1: Alameda, Butte, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, Santa Clara, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba Counties  
Area 2: Alpine, Amador, Calaveras, San Joaquin, Stanislaus, and Tuolumne Counties

## TERRAZZO WORKERS and TILE SETTERS:

Area 1: Fresno, Kings, Madera, Mariposa, Merced, and Tulare Counties  
Area 2: Monterey and Santa Cruz Counties

## TERRAZZO FINISHERS:

Area 1: Alameda, Alpine, Amador, Butte, Calaveras, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba Counties

## TILE FINISHERS:

Area 1: Alameda, Alpine, Amador, Butte, Calaveras, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba Counties

## LABORERS

Area 1: Alameda, Contra Costa, Marin, San Francisco, San Mateo and Santa Clara Counties  
Area 2: Del Norte, El Dorado, Fresno, Humboldt, Kings, Lake, Madera, Mendocino, Monterey, Napa, Nevada, Placer, Sacramento, San Benito, San Joaquin, Santa Cruz, Solano, Sonoma, and Yolo Counties  
Area 3: Alpine, Amador, Butte, Calaveras, Colusa, Glenn, Lassen, Mariposa, Merced, Modoc, Plumas, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tuolumne and Yuba Counties

## LABORERS (Cont'd)

## TUNNEL and SHAFT WORK

Group 1: Diamond Driller; Groundman; Gunite and Shotcrete Nozzlemen; Rodmen; Shaft Work and Raise (below actual or excavated ground level)

Group 2: Bit Grinder; Blaster; Drillers, Powderman-heading; Cherry Pickermen - where car is lifted; Concrete Finisher in Tunnel; Concrete Screed Man; Grout Pumper and Potman; Gunite and Shotcrete Gunmen and Potmen; Headermen; High Pressure Nozzlemen; Miners - Tunnel, including Top and Bottom Man on Shaft and Raise Work; Nipper Nozzlemen on slick line; Sandblaster-Potman (work assignment interchangeable); Steel Form Raisers and Setters; Timberman, Retinberman - wood or steel or substitute materials therefore; Tugger

Group 3: Cabletender; Chucktender; Powderman - Primer House; Vibrators, Pavement Breakers

Group 4: Bull Gang - Muckers, Trackmen; Concrete Crew - includes rodding and spreading; Dumpmen (any method); Grout Crew Reboundmen; Swamper

## LABORERS

Group 1: Asphalt Ironers and Rakers; Asphalt Spreader Boxes (all types); Backo, Wacker and similar type Tampers; Buggyobile; Chain-saw, Faller, Logloader and Bucker; Compactors of all types; Concrete and Magnesite Mixer, 1/2 yd. and under; Concrete Pan Work; Concrete Saw; Concrete Sander; Cribber and/or Shoring; Cut Granite Curb Setter; Form Raisers; Slip Forms; Green Cutters, Headerboardmen, Hubsetters, Aligners; Jackhammer Operators; Jacking of pipe over 12 inches; Jackson and similar type Compactors; Kettleman, Potmen and Men applying asphalt, lay-kold, creosote, lime, caustic and similar type materials; Lagging, Sheeting, Whaling, Bracing, Trenchjacking, hand-guided Lagging Hammer; Magnesite, Epoxyresin, Fiberglass, Wastic Workers (wet or dry); Perma Curbs; Precast-manhole Setters; Cast-in-place Manhole Form Setters; Pressure Pipe Tester; Pavement Breakers and Spaders, including Tool Grinder; Pipelayers, Caulkers, Banders, Pipewrappers, Conduit Layers, Plastic Pipelayers; Post Hole Diggers, air, gas, and electric; Power Broom Sweepers; Power Tampers of all types (except as shown in Group 2); Ram Set Gun and Stud Gun; Riprap-stonepaver and Rock-slinger, including placing of sacked concrete and/or sand (wet or dry); Rotary Scarifier, Multiple Head Concrete Chipper; Davis Trencher, 300 or similar type (and all small Trenchers); Roto and Ditch Witch; Roto-killer; Sandblasters, Potmen, Gunman, Nozzlemen; Signalling and Rigging; Tank Cleaners; Tree Climbers; Vibrascreed, Bull Float in connection with Laborers' work; Vibrators; Drilling Machine; High Pressure Blow Pipe (1 1/2" or over, 100 lbs. pressure and over); Hydro Seeder and similar type; Laser Beam in connection with Laborers' work

## LABORERS (Cont'd)

Group 1(a): Joy Drill Model TWM-2A; Gardner-Denver Model DH143 and similar type drills; track Drillers; Jack Leg Drillers; Diamond Drillers; Wagon Drillers; Mechanical Drillers, all types regardless of type or method of power; Multiple Unit Drills; Blasters and Powdermen; all work of loading, placing and blasting of all power and explosives of whatever type regardless of method used for such loading and placing; High Scalers (including drilling of same); Tree Topper; Bit Grinder

Group 1(b): Sewer Cleaners receive an additional \$4.00 per day, \$5.00 per day on recently active large diameter sewers or sewer manholes

Group 1(c): Burning and Welding in connection with Laborers' work

Group 1(d): Repair Trackmen and Road Beds (cut and cover work of subway after the temporary cover has been placed)

Group 1(e): Laborers on general construction work on or in Bell Hole Footings and Shaft

Group 1(f): Wire Winding Machine in Connection with Guniting or Shotcrete - Allgher

Group 1(g): Pipelayers; Caulkers; Sanders; Pipewrappers; Conduit Layers and Plastic Pipelayers; Pressure Pipe Tester, no joint pipe and stripping of same, including repair of voids; Precast Manhole Setters; Cast-in-place Manhole Form Setters

Group 2: Asphalt Shovelers; Cement Dumpers and handling dry cement or gypsum; Choke-setter and Digger (clearing work); Concrete Bucket Dumper and Chute-man; Concrete Chipping and Grinding; Concrete Laborers (wet or dry); Chuck Tender; High Pressure Nozzle-man, Adductors; Grou-crew; Hydraulic Monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete construction; Pittsburgh Chipper and similar type Brush Shredders; Slopers; Singlefoot, hand held, Pneumatic Tamper; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1(f); Jacking of Pipe under 12 inches

Group 3: All Cleanup work of debris, grounds and buildings including but not limited to street cleaners; Cleaning and washing windows; Construction Laborers including Bridge and General Laborers; Pumpman; Load Spotter; Fire Watcher; Street Cleaners; Gardeners, Horticultural and Landscape Laborers; Jetting; Limbers; Brush Loaders; Filers, Maintenance Landscape Laborers on new construction; Maintenance, Repair Trackmen and Road beds; Streetcar and Railroad Construction Track Laborers; Temporary air and water lines, Victaulic or similar; Tool Room Attendant; Fence Erectors; Guardrail Erectors; Pavement Markers (button setters)

Group 4: Brick Cleaners; Lumber Cleaners

## LABORERS (Cont'd)

## GUNNYTE

Group 1: Nozzleman (including Gunman, Potman); Rodmen, Groundman

Group 2: Reboundman

Group 3: General Laborers

## WRECKING WORK

Group 1: Skilled Wrecker (removing and salvaging of sash, windows, doors, plumbing and electric fixtures)

Group 2: Semi-skilled Wrecker (salvaging of other building materials)

Group 3: General Laborer (includes all cleanup work, loading lumber, loading and burning of debris)

POWER EQUIPMENT OPERATORS  
AREAS I and II

Group 1: Assistants to Engineers (Brakeman; Fireman; Heavy Duty Repairman Tender; Oiler; Deckhand; Signalman; Switchman; Tar Pot Fireman); Partsman (heavy duty repair shop parts room)

Group 2: Compressor Operator; Concrete Mixer (up to and including 1 yd.); Conveyor Belt Operator (tunnel); Fireman Hot Plant; Hydraulic Monitor; Mechanical Conveyor (handling building materials); Mixer Box Operator (concrete plant); Pump Operator; Spreader Boxman (with screeds); Tar Pot Fireman (power agitated)

POWER EQUIPMENT OPERATORS (Cont'd)  
AREAS I and II (Cont'd)

POWER EQUIPMENT OPERATORS (Cont'd)  
AREAS I and II (Cont'd)

Group 3: Box Operator (bunker); Helicopter Radioman (Signalman); Motor-man; Locomotive (30 tons or under); Oiler; Ross Carrier (construction job site); Rotomist Operator; Screedman (except asphaltic concrete paving); Self-propelled, automatically applied concrete curing machine (on streets, highways, airports and canals); Trenching Machine (maximum digging capacity 5 ft. depth); Tugger Hoist, single drum; Truck Crane Oiler; Boiler Tender.

Group 4: Ballast Jack Tamper; Ballast Regulation; Ballast Tamper Multi-purpose; Boxman (asphalt plant); Elevator Operator (inside); Fork Lift or Lumber Stacker (construction job site); Line Master; Material Hoist (1 drum); Shuttlecar; Tie Spacer; Towermobile

Group 5: Compressor Operator (over 2); Concrete Mixers (over 1 yd.); Concrete Pumps or Pumpcrete Guns; Generators; Grouting Machine; Pressweld (air operated); Pumps (over 1); Welding Machines (powered other than by electricity)

Group 6: BLH Lima Road Pactor or similar; Boom Truck or Dual Purpose A-Frame Truck; Concrete Batch Plants (wet or dry); Concrete Saws (self-propelled unit) on streets, highways, airports and canals; Drilling and Boring Machinery, vertical and horizontal (not to apply to Waterliners, Wagon Drills or Jackhammers); Gradesetter; Grade Checker (mechanical or otherwise); Highline Cableway Signalman; Locomotives (steam of over 30 tons); Maginnis Internal Full Slab Vibrator (on airports, highways, canals and warehouses); Mechanical Finishers (concrete) (Clary, Johnson, Bidwell Bridge Deck or similar types); Mechanical Burm, Curb and/or Curb and Gutter Machine, concrete or asphalt; Portable Crusher; Post Driver (M-1500 and similar); Power Jumbo Operator (setting slip forms, etc. in tunnels); Roller (except asphalt); Screedman (Barber-Greene and similar) (asphaltic concrete paving); Self-propelled Compactor (single engine); Self-propelled Pipeline Wrapping Machine, Percut, CRC, or similar types; Slip Forms Pumps (lifting device for concrete forms); Small Rubber Tired Tractor; Surface Heater; Self-propelled Power Sweeper; Self-propelled Tape Machine; Auger-type drilling equipment, up to and including 30 ft. depth digging capacity M.R.C.

Group 7: Concrete Conveyor or Concrete Pump, Truck or equipment mounted (boom length to apply); Concrete Conveyor, building site; Deck Engineers; Dual Drum Mixer; Fuller Kenyon pump and similar types; Gantry Rider (or similar); Hydra-hammer (or similar); Material Hoist (2 or more drums); Mechanical Finishers or Spreader Machine (asphalt, Barber-Greene and similar); Mine or Shaft Hoist; Mixermobile; Pavement Breaker with or without Compressor Combination; Pipe Bending Machine (pipelines only); Pipe Cleaning Machine (tractor propelled and supported); Pipe Wrapping Machine (tractor propelled and supported); Refrigeration plant; Roller Operator (finish asphalt); Self-propelled boom type lifting device (center mount) (10 tons or less M.R.C.); Self-propelled Elevating Grader Plane; Slusher Operator; Small tractor (with boom); Soil Tester; Truck type Loader; Welding Machines (gasoline or diesel)

Group 8: Armor-Coater (or similar); Asphalt Plant Engineer; Cast-in-Place Pipe Laying Machine; Combination Slusher and Motor Operator; Concrete Batch Plant (multiple units); Dozer; Heading Shield Operator; Heavy Duty Repairman and/or Welder; Ken Seal Machine (or similar); Kolman Loader; Loader (up to 2 yds.); Mechanical Trench Shield; Portable Crushing and Screening Plants; Push Cat; Rubber Tired Earth-moving Equipment (up to and including 45 cu. yds. "struck" M.R.C) (Euclids, T-Pulls, DW-10, 20, 21, and similar); Rubber Tired Dozer; Self-propelled Compactor with Dozer, Sheepsfoot; Timber Skider (rubber tired or similar equipment); Tractor drawn Scraper; Tractor; Trenching Machine; Tri-batch Paver; Tunnel Mole Boring Machine; Welder; Woods-mixer (and other similar pugmill equipment)

Group 9: Canal Finger Drain Digger; Chicago Boom; Combination Mixer and Compressor (Gunitite); Combination Slurry Mixer and/or Cleaner; Highline Cableway (5 tons and under); Lull Hi-lift or similar (20 ft. or over); Mucking Machine (rubber tired, rail or track type); Tractor (with boom) (D-6 or larger and similar)

Group 10: Boom-type Backfilling Machine; Bridge Crane; Cary-lift (or similar); Chemical Grouting Machine, truck mounted; Combination Backhoe and Loader (up to and including 1/2 cu. yd. M.R.C.); Derrick (2 operators required when swing engine remote from Hoist); Derrick Barges (except excavation work); Do-mor Loader; Adams Elevator; Elevating grader; Heavy Duty Rotary Drill Rig (including Caisson Foundation work and Euclid Loader and similar type; Robbins type drills; Koehring Scooper (or similar); Lift Slab Machine; (Vagtberg and similar types); Loader (2 yds. up to and including 4 yds.); Locomotive, 100 tons (single or multiple units); Multiple Engine Earthmoving Machine (Euclids, Dozers, etc.) (no tandem Scrapper); Pre-stress Wire Wrapping Machine; Reservoir-debris Pug (self-propelled floating); Rubber-tired Scraper; Self-loading (paddle wheels, etc.); Shuttle Car (reclaim station); Single engine scraper over 45 yds.; Soil Stabilizer (P & H or equal); Sub-grader (Gurrler or other automatic type); Tractor, Compressor Drill Combination; Track Laying type Earth Moving Machine (single engine with Tandem Scrapers); Train Loading Station; Trenching Machine, multi-engine with sloping attachment, Jelfco or similar; Vacuum Cooling Plant; Whitley Crane (up to and including 25 tons)

Group 10-A: Backhoe (Hydraulic) (up to and including 1 cu. yd. M.R.C.); Backhoe (cable) (up to and including 1 cu. yd. M.R.C.); Combination Backhoe and Loader (over 3/4 cu. yd. M.R.C.); Continuous Flight Tie Back Auger (Crane attached/separate controls); Cranes not over 25 tons, Hammerhead and Gantry; Gradalls (up to and including 1 cu. yd.); Power Blade Operator (single engine); Power Shovels, Clamshells; Draglines (up to and including 1 cu. yd. M.R.C.) (Long Boom Pay); Rubber-tired Scraper, self-loading (paddle wheel, twin engine); Self-propelled Boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); CMI Dual Lane Auto Grader Sp-30 or similar

POWER EQUIPMENT OPERATORS (Cont'd)  
AREAS I and II (Cont'd)

Group 11: Automatic Concrete Slip-form Paver (Gradesetter, Screedman); Automatic Railroad Car Dumper; Canal Trimmer with ditching attachments; Cary Lift, Campbell or similar, Continuous Flight Tie Back Auger (Crane attached, single controls); Cranes (over 25 tons up to and including 125 tons); Drott Travellift 650-A-1 or similar (45 ton or over); Euclid Loader when controlled from the pullicat; Highline Cableway (over 5 tons); Loader (over 4 cu. yds., up to and including 12 cu. yds.); Miller Formless M-900 Slope Paver or similar (Grade Setter required); Multiple Engine Scraper (when used as Push Pull); Power Blade Operator (multi-engine); Power Shovels, Clamshells, Draglines, Backhoes, Gradalls (over 1 cu. yd. and up to and including 7 cu. yds. M.R.C.; Long Boom Pay); Rubber-tired Earthmoving Machines (multiple propulsion power units and two or more Scrapers) (up to and including 75 cu. yds. Struck M.R.C.); Self-propelled Compactor Boom-type lifting device (center mount) (over 25 tons M.R.C.); Single engine Rubber-tired Earthmoving Machines (with Tandem Scrapers); Slip-form Paver (concrete or asphalt) (Screedman required); Tandem Cats; Tower Cranes Mobile (including rail mounted); Trencher (pulling attached shield); Tower cranes, Universal Liebherr and similar types (in the erection, dismantling and moving of equipment); Wheel Excavator (up to and including 750 cu. yds. per hour); Whirley Crane (over 25 tons); Multi-earthmoving Equipment (up to and including 75 cu. yds. "struck" M.R.C.); Truck mounted Hydraulic Crane when remote control equipped (over 10 tons up to and including 25 tons)

Group 11-A: Band Wagons (in conjunction with wheel excavator); Cranes (over 125 tons); Loader (over 12 cu. yds., up to and including 18 cu. yds.); Power Shovels, Clamshells, Backhoes, Gradalls, and Draglines (over 7 cu. yds. M.R.C.); Rubber-tired Multi-purpose Earth Moving Machines (2 units over 75 cu. yds. "struck" M.R.C.); Wheel Excavator (over 750 cu. yds. per hour)

Group 11-B: Loader (over 18 yards)

Group 11-C: Operator of Helicopter (when used in erection work); Remote controlled Earthmoving equipment

## POWER EQUIPMENT OPERATORS (Cont'd)

## DREDGING

## AREA DEFINITIONS FOR SCHEDULES I and II

Four Centers designated: City Hall of Oakland, San Francisco, Sacramento and Stockton, California  
Area 1: Up to 20 road miles from said Centers  
Area 2: More than 20 road miles to and including 30 road miles from said Centers  
Area 3: Outside of 30 road miles from said Centers  
Area 4: An area extending 25 road miles from shoreline of Lake Tahoe

## SCHEDULE I

CLAMSHELL and DIPPER DREDGING (New Construction)

Group 1: Bargeman; Deckhand; Fireman; Oiler

Group 2: Deck Engineers; Deck Mate

Group 3: Welder; Mechanic Welder; Watch Engineer

Group 4: Clamshell Operator (up to and including 7 cu. yds. M.R.C.) (Long Boom Pay)

Group 4A: Clamshell Operator (over 7 cu. yds. M.R.C.) (Long Boom Pay)

## SCHEDULE II

HYDRAULIC SUCTION DREDGING and all other CLAMSHELL and DIPPER DREDGING

Group A-1: Bargeman; Deckhand; Leveehand; Fireman; Oiler

Group A-2: Winchman (Stern Winch on Dredge); Deck Engineer

Group A-3: Watch Engineer; Welder; Welder Mechanic; Deckmate; Booster Pump Operator (Mud Cat)

Group A-4: Leverman; Clamshell Operator

## FILEDRIVING

Group 1: Assistant to Engineer (Fireman, Oiler, Deckhand)

Group 1A: Compressor Operator

Group 1B: Assistant to Engineer (Truck Crane Oiler)

Group 2A: Tugger Hoist Operator (hoisting material only)

Group 2B: Forklift Operator

POWER EQUIPMENT OPERATORS  
(Cont'd)  
PILEDRIVING (Cont'd)

- Group 2C: Compressor Operator (over 2); Generators; Pumps (over 4); Welding Machines (powered by other than electricity)
- Group 2D: A-Frames
- Group 3: Deck Engineer (Deck Engineer Operator required when deck engine is used); Self-propelled Boom-type lifting device (center mount) (10 ton capacity or less M.R.C.)
- Group 3A: Heavy Duty Repairman and/or Welder
- Group 4: Operating Engineer in lieu of Assistant to Engineer tending boiler or compressor attached to Crane Piledriver; Operator of Piledriving Rigs, Skid or Floating and Derrick Barges (Assistant to Engineer required); Operator of diesel or gasoline power Crane Piledriver (without boiler) up to and including 1 cu. yd. rating (Assistant to Engineer required); Self-propelled Boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Truck Crane Operator (up to and including 25 tons) (hoisting material only) (Assistant to Engineer required)
- Group 5: Operator of diesel or gasoline powered Crane Piledriver (with boiler) over 1 cu. yd. rating (Assistant to Engineer required); Operator of Crane (with steam, flash boiler, pump or compressor attached) (Group 4 Engineer required); Operator of steam powered crawler or Universal type Driver (Raymond or similar) (Assistant to Engineer required) Truck Crane Operator (over 25 tons) (hoisting material or performing piledriving work) (Assistant to Engineer required); Self-propelled Boom-type lifting device (center mount) (over 25 tons) (Assistant to Engineer required)
- Group 6: Cranes (over 125 tons) (Assistant to Engineer required)

## STEEL ERECTION

- Group 1: Assistant to Engineer (Oiler)
- Group 2: Compressor Operator, Generator, gasoline or diesel driven (100 K.W. or over) (structural steel or tank construction only)
- Group 3: Compressors, Generators and/or Welding Machines or combination (2 to 6) (Over 6 additional Engineers required) (structural steel or tank erection only)
- Group 4: Heavy Duty Repairman, Tractor Operator
- Group 4A: Combination Heavy Duty Repairman and/or Welder

POWER EQUIPMENT OPERATORS  
(Cont'd)  
STEEL ERECTION (Cont'd)

- Group 5: Boom Truck or Dual Purpose A-Frame Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 tons M.R.C. or less) (Assistant to Engineer required); Self-propelled Boom-type lifting device (center mount) (10 ton capacity or less M.R.C.); Single drum Hoist; Tugger Hoist
- Group 6: Catty Lift, Campbell or similar; Crawler Cranes and Truck Cranes (over 15 tons M.R.C.) (Assistant to Engineer required); Der-ricks (2 Operators when swing engine remote from hoist); Gantry Rider (or similar equipment); Highline Cableway (Signalman required); Self-propelled Boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Tower Cranes Mobile including rail mounted (Assistant to Engineer required); Tower Cranes, Universal Lieber and similar types (in the erection, dismantling and moving of equipment there shall be an additional Operating Engineer)
- Group 7: Self-propelled Boom-type lifting device (center mount) (over 25 tons) (Assistant to Engineer required)
- Group 8: Cranes (over 125 tons) (Assistant to Engineer required)
- Group 9: Helicopter Operator
- TRUCK DRIVERS
- Group 1: Bulk Cement Spreader (w/wo Auger, under 4 yds. water level); Bus or Manhaul Driver; Concrete Pump Machine; Concrete Pump Truck (when Flat Rack Truck is used appropriate Flat Rack rate shall apply); Dump (under 4 yds. water level); Dumpcrete Truck (under 4 yds. water level); Dumpster (under 4 yds. water level); Escort or Pilot Car Driver; Nipper Truck (when Flat Rack Truck is used appropriate Flat Rack rate shall apply); Pickups; Skids (Debris Box, under 4 yds. water level); Team Drivers; Trucks (Dry Pre-batch Concrete Mix, under 4 yds. water level); Warehousemen
- Group 2: Teamster Oiler and/or Greaser and/or Service Man
- Group 3: Bulk Cement Spreader (w/wo Auger, 4 yd. and under 6 yds. water level); Dump (4 yds. and under 6 yds. water level); Dumpcrete (4 yds. and under 6 yds. water level); Skids (Debris Box, 4 yds. and under 6 yds. water level); Single Unit Flat Rack (2 axle unit); Industrial Lift Truck (mechanical Tailgate); Trucks (Dry Pre-batch Concrete Mix, 4 yds. and under 6 yds. water level)
- Group 4: Jetting Truck and Water Truck (under 2,500 gallons)
- Group 5: Road Oil Trucks or Boot Man

## TRUCK DRIVERS (Cont'd)

- Group 6: Lift Jitneys, Fork Lift
- Group 7: Transit Mix, Agitator (under 6 yds.)
- Group 8: Fuel and/or Grease Truck Driver or Fuelman
- Group 9: Vacuum Truck, under 3,500 gallons
- Group 10: Scissor Truck; Single unit Flat Rack (2 axle unit); Industrial Lift Truck (mechanical tailgate); Small rubber tired tractor (when used within Teamsters' jurisdiction)
- Group 11: Jetting Truck and Water Trucks, 2,500 gallons and under 4,000 gallons
- Group 12: Combination Winch Truck with Hoist; Transit Mix Agitator (6 yds. and under 8 yds.)
- Group 13: Vacuum Truck, 3,500 gallons and under 5,500 gallons
- Group 14: Rubber-tired Muck Car (not self-loaded)
- Group 15: Bulk Cement Spreader (w/wo Auger, 6 yds. and under 8 yds. water level); Dump (6 yds. and under 8 yds. water level); Dumpcrete (6 yds. and under 8 yds. water level); Skids (Debris Box, 6 yds. and under 8 yds. water level); Trucks (Dry Pre-batch Concrete Mix, 6 yds. and under 8 yds. water level)
- Group 16: A-Frame, Winch Truck; Buggymobile; Jetting and Water Truck (4,000 gallons and under 5,000 gallons); Rubber tired Jumbo
- Group 17: Heavy Duty Transport (high bed)
- Group 18: Ross Hyster and similar Straddle Carrier
- Group 19: Transit Mix Agitator (8 yds. through 10 yds.)
- Group 20: Vacuum Truck (5,500 gallons and under 7,500 gallons)
- Group 21: Jetting Truck and Water Truck (5,000 gallons and under 7,000 gallons)
- Group 22: Combination Bootman and Road Oiler
- Group 23: Transit Mix Agitator (over 10 yds. through 12 yds.)
- Group 24: Bulk Cement Spreader (w/wo Auger, 8 yds. and including 12 yds. water level); Dump (8 yds. and including 12 yds. water level); Dumpcrete (8 yds. and including 12 yds. water level); Self-propelled Street Sweeper with self-contained refuse bin; Skids (Debris Box, 8 yds. and including 12 yds. water level); Snow Go and/or Snow Plow; Truck (Dry Pre-batch Concrete Mix, 8 yds. and including 12 yds. water level)

## TRUCK DRIVERS (Cont'd)

- Group 25: Heavy Duty Transport (Gooseneck Lowbed)
- Group 26: Transit Mix Agitator (over 12 yds. through 17 yds.)
- Group 27: Ammonia Nitrate Distributor Driver and Mixer; Bulk Cement Spreader (w/wo Auger, over 12 yds. and including 18 yds. water level); Dump (over 12 yds., and including 18 yds. water level); Dumpcrete (over 12 yds. and including 18 yds. water level); Dumpster (over 12 yds. and including 18 yds. water level); Truck (Dry Pre-batch Concrete Mix, over 12 yds. and including 18 yds. water level)
- Group 28: Double Gooseneck (7 or more axles); Heavy Duty Transport Tiller Man
- Group 29: P.B. or similar type self-loading Truck
- Group 30: Transit Mix Agitator (over 14 yds. through 16 yds.)
- Group 31: Bulk Cement Spreader (w/wo Auger, over 18 yds. and including 24 yds. water level); Combination Dump and Dump Trailer; Dump (over 18 yds. and including 24 yds. water level); Dumpcrete (over 18 yds. and including 24 yds. water level); Dumpster (over 18 yds. and including 24 yds. water level); Skid (Debris Box, over 18 yds. and including 24 yds. water level); Transit Mix Agitator (over 12 yds. through 16 yds.); Trucks (Dry Pre-batch Concrete Mix, over 18 yds. and including 24 yds. water level)
- Group 32: Bulk Cement Spreader (w/wo Auger, over 24 yds. and including 35 yds. water level); Dump (over 24 yds. and including 35 yds. water level); Dumpcrete (over 24 yds. and including 35 yds. water level); Dumpster (over 24 yds. and including 35 yds. water level); DW 10's, 20's, 21's and other similar Cat type, Terra Cobra, Lefornapulls, Tournarocker, Euclid and similar type equipment when pulling Fuel and/or Grease Tank Trailers or other misc. Trailers; Skids (Debris Box, over 24 yds. and including 35 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 24 yds. and including 35 yds. water level)
- Group 33: Truck Repairman
- Group 34: Bulk Cement Spreader (w/wo Auger, over 35 yds. and including 50 yds. water level); Dump (over 35 yds. and including 40 yds. water level); Dumpcrete (over 35 yds. and including 50 yds. water level); Dumpster (over 35 yds. and including 50 yds. water level); Skids (Debris Box, over 35 yds. and including 50 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 35 yds. and including 50 yds. water level)
- Group 35: DW 10's, 20's, 21's and other similar Cat type, Terra Cobra, Lefornapulls, Tournarocker, Euclid and similar type equipment when pulling Aqua/Pak or Water Tank Trailers

## TRUCK DRIVERS (Cont'd)

Group 36: Bulk Cement Spreader (w/wo Auger, over 50 yds. and under 65 yds. water level); Dump (over 50 yds. and under 65 yds. water level); Dumpcrete (over 50 yds. and under 65 yds. water level); Dumpster (over 50 yds. and under 65 yds. water level); Helicopter Pilot (when transporting men or materials); Skids (Debris Box, over 50 yds. and under 65 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 50 yds. and under 65 yds. water level)

Group 37: Bulk Cement Spreader (w/wo Auger, over 65 yds. and including 80 yds. water level); Dump (65 yds. and including 80 yds. water level); Dumpcrete (over 65 yds. and including 80 yds. water level); Dumpster (over 65 yds. and including 80 yds. water level); Skids (Debris Box, 65 yds. and including 80 yds. water level); Trucks (Dry Pre-batch Concrete Mix, 65 yds. and including 80 yds. water level)

Group 38: Bulk Cement Spreader (w/wo Auger, over 80 yds. and including 95 yds. water level); Dump (over 80 yds. and including 95 yds. water level); Dumpcrete (over 80 yds. and including 95 yds. water level); Dumpster (over 80 yds. and including 95 yds. water level); Skids (Debris Box, over 80 yds. and including 95 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 80 yds. and including 95 yds. water level)

## AREA DESCRIPTIONS

FOR

## POWER EQUIPMENT OPERATORS

AREAS I and II

\*\*AREA I: All areas included in the description defined below which is based upon Township and Range Lines of AREAS I and II.

Commencing in the Pacific Ocean on the extension of the Southerly line of Township 19S.

Thence Easterly along the Southerly line to Township 19S, crossing the Mt. Diablo Meridian to the S.W. corner of Township 19S, range 6E, Mt. Diablo Base Line and Meridian, Thence Southerly to the S.W. corner of township 20S, range 6E, Thence Easterly to the S.W. corner of township 20S, range 13E, Thence Southerly to the S.W. corner of township 21S, range 13E, Thence Easterly to the S.W. corner of township 21S, range 17E, Thence Southerly to the S.W. corner of township 22S, range 17E, Thence Easterly to the S.E. corner of township 22S, range 17E, Thence Southerly to the S.E. corner of township 23S, range 18E, Thence Easterly to the S.E. corner of township 23S, range 18E, Thence Southerly to the S.W. corner of township 24S, range 19E, falling on the Southerly line of Kings County, thence Easterly along the Southerly Boundary of Kings County and the Southerly Boundary of Tulare County, to the S.E. corner of township 24S, range 29E,

## AREA DESCRIPTIONS (Cont'd)

FOR

## POWER EQUIPMENT OPERATORS

AREAS I and II

Thence Northerly to the N.E. corner of township 21S, range 29E, Thence Westerly to the N.W. corner of township 21S, range 29E, Thence Northerly to the N.E. corner of township 13S, range 28E, Thence Westerly to the N.W. corner of township 13S, range 28E, Thence Northerly to the N.E. corner of township 11S, range 27E, Thence Westerly to the N.W. corner of township 11S, range 27E, Thence Northerly to the N.E. corner of township 10S, range 25E, Thence Westerly to the N.W. corner of township 10S, range 25E, Thence Northerly to the N.E. corner of township 9S, range 25E, Thence Westerly to the N.W. corner of township 8S, range 24E, Thence Northerly to the N.E. corner of township 6S, range 23E, Thence Westerly to the S.E. corner of township 5S, range 19E, Thence Northerly to the S.E. corner of township 5S, range 19E, Thence Westerly to the N.W. corner of township 5S, range 19E, Thence Northerly to the N.E. corner of township 3S, range 18E, Thence Westerly to the N.W. corner of township 3S, range 18E, Thence Northerly to the N.E. corner of township 2S, range 17E, Thence Westerly to the N.W. corner of township 2S, range 17E, Thence Northerly crossing the Mt. Diablo Baseline to the N.E. corner of township 2N, range 16E,

Thence Westerly to the N.W. corner of township 2N, range 16E, Thence Northerly to the N.E. corner of township 3N, range 15E, Thence Westerly to the N.E. corner of township 3N, range 15E, Thence Northerly to the N.E. corner of township 4N, range 14E, Thence Westerly to the N.W. corner of township 4N, range 14E, Thence Northerly to the N.E. corner of township 5N, range 13E, Thence Westerly to the N.E. corner of township 5N, range 13E, Thence Northerly to the N.E. corner of township 10N, range 12E, Thence Easterly to the S.E. corner of township 11N, range 14E, Thence Northerly to the N.E. corner of township 11N, range 14E, Thence Westerly to the N.E. corner of township 11N, range 10E, Thence Northerly to the N.E. corner of township 15N, range 10E, Thence Easterly to the S.E. corner of township 16N, range 11E, Thence Northerly to the N.E. corner of township 16N, range 11E, Thence Easterly to the S.E. corner of township 17N, range 14E, Thence Southerly to the S.W. corner of township 14N, range 14E, Thence Easterly to the S.E. corner of township 14N, range 15E, Thence Southerly to the S.W. corner of township 13N, range 16E, Thence Easterly to the S.E. corner of township 13N, range 16E, Thence Southerly to the S.W. corner of township 12N, range 17E, Thence Easterly along the Southern Line to township 12N to the Eastern Boundary of the State of California, to the State of California to the N.E. corner of township 17N, range 18E, Thence Westerly to the N.W. corner of township 17N, range 18E, Thence Northerly to the N.E. corner of township 20N, range 10E,

AREA DESCRIPTIONS (Cont'd)  
FOR  
POWER EQUIPMENT OPERATORS  
AREAS I and II

Thence Westerly to the N.W. corner of township 20N, range 20E,  
Thence Northerly to the N.E. corner of township 21N, range 9E,  
Thence Westerly to the N.W. corner of township 21N, range 9E,  
Thence Northerly to the N.E. corner of township 22N, range 8E,  
Thence Westerly to the N.W. corner of township 27N, range 8E,  
Thence Northerly to the S.W. corner of township 27N, range 8E,  
Thence Easterly to the S.E. corner of township 27N, range 8E,  
Thence Northerly to the N.E. corner of township 28N, range 8E,  
Thence Westerly to the N.W. corner of township 28N, range 7E,  
Thence Northerly to the N.E. corner of township 30N, range 6E,  
Thence Westerly to the N.W. corner of township 30N, range 1E,  
Thence Northerly along the Mt. Diablo Meridian to the N.E. corner  
of Township 34N, range 1W,  
Thence Westerly to the N.W. corner of township 34N, range 6W,  
Thence Southerly to the N.E. corner of township 32N, range 7W,  
Thence Westerly to the N.W. corner of township 32N, range 7W,  
Thence Southerly to the S.W. corner of township 30N, range 7W,  
Thence Easterly to the S.E. corner of township 30N, range 7W,  
Thence Southerly to the S.W. corner of township 16N, range 6W,  
Thence Easterly to the S.E. corner of township 16N, range 6W,  
Thence Southerly to the S.W. corner of township 14N, range 5W,  
Thence Westerly to the S.E. corner of township 14N, range 7W,  
Thence Northerly to the N.E. corner of township 14N, range 7W,  
Thence Westerly to the N.W. corner of township 14N, range 7W,  
Thence Northerly to the N.E. corner of township 15N, range 8W,  
Thence Westerly to the S.E. corner of township 16N, range 12W,  
Thence Northerly to the N.E. corner of township 16N, range 12W,  
Thence Westerly to the N.W. corner of township 16N, range 12W,  
Thence Northerly to the N.E. corner of township 18N, range 12W,  
Thence Westerly to the N.W. corner of township 18N, range 14W,  
Thence Southerly to the S.W. corner of township 18N, range 14W,  
Thence Easterly to the S.E. corner of township 18N, range 14W,  
Thence Southerly to the S.W. corner of township 16N, range 13W,  
Thence Westerly to the N.W. corner of township 15N, range 14W,  
Thence Southerly to the S.W. corner of township 14N, range 14W,  
Thence Easterly to the S.E. corner of township 17N, range 14W,  
Thence Southerly to the S.W. corner of township 13N, range 13W,  
Thence Easterly to the S.E. corner of township 13N, range 12W,  
Thence Southerly to the S.W. corner of township 11N, range 12W,  
Thence Easterly to the S.E. corner of township 11N, range 12W, to the  
Pacific Ocean excluding that portion of Northern California  
within Santa Clara County included within the following line:  
Commencing at the N.W. corner of township 6S, range 3E,  
Mt. Diablo Baseline and Meridian:

Thence in a Southerly direction to the S.W. corner of township  
7S, range 3E,  
Thence in a Easterly direction to the S.E. corner of township  
7S, range 4E,  
Thence in a Northerly direction to the N.E. corner of township  
6S, range 4E,

AREA DESCRIPTIONS (Cont'd)  
FOR  
POWER EQUIPMENT OPERATORS  
AREAS I and II

Thence in a Westerly direction to the N.W. corner of township  
6S, range 3E, to the point of beginning which portion is a  
part of Area 2.

AREA I: also includes that portion of Northern California within  
the following lines:

Commencing in the Pacific Ocean on a extension of the Southerly  
line to township 2N, Humboldt Baseline and Meridian:  
Thence Easterly along the Southerly line to Township 2N, to  
the S.W. corner of Township 2N, range 1W,  
Thence Southerly to the S.W. corner of township 1N, range 1W,  
Thence Easterly along the Humboldt Baseline to the S.W. corner  
of township 1N, range 2E,  
Thence Southerly to the S.W. corner of township 2S, range 2E,  
Thence Easterly to the S.E. corner of township 2S, range 2E,  
Thence Southerly to the S.W. corner of township 4S, range 3E,  
Thence Easterly to the S.E. corner of township 4S, range 3E,  
Thence Northerly to the N.E. corner of township 2S, range 3E,  
Thence Westerly to the N.W. corner of township 2S, range 3E,  
Thence Northerly crossing the Humboldt Baseline to the S.W.  
corner of township 1N, range 3E,  
Thence Easterly along the Humboldt Baseline to the S.E. corner  
of township 1N, range 3E,  
Thence Northerly to the N.E. corner of township 9N, range 3E,  
Thence Westerly to the N.W. corner of township 9N, range 2E,  
Thence Northerly to the N.E. corner of township 10N, range 1E,  
Thence Westerly along the Northerly line to township 10N, into  
the Pacific Ocean.

AREA I: also includes that portion of Northern California included  
within the following lines:  
Commencing at the Northerly boundary of the State of California  
at the N.W. corner of township 48N, range 7W, Mt. Diablo Baseline  
and Meridian:

Thence Southerly to the S.W. corner of township 44N, range 7W,  
Thence Easterly to the S.E. corner of township 44N, range 7W,  
Thence Southerly to the S.W. corner of township 43N, range 6W,  
Thence Easterly to the S.E. corner of township 43N, range 5W,  
Thence Northerly to the N.E. corner of township 48N, range 5W,  
on the Northerly boundary of the State of California,  
Thence Westerly along the Northerly boundary of the State of  
California to the point of beginning.

AREA II: All areas not included within AREA I as defined.

Unlisted classifications needed for work not included within the  
scope of the classifications listed may be added after award only  
as provided in the labor standards contract clauses (29 CFR, 5.5  
(a)(1)(ii))

STATE: Louisiana

PARISHES: ZONE 1-Jefferson, Orleans & St. Bernard; ZONE 2-Bossier & Caddo; ZONE 3-Calcasieu & Strategic Petroleum Reserve in Cameron Par.; ZONE 4-Beauregard, Cameron (excluding Strategic Petroleum Reserve) & Jefferson Davis; ZONE 5-Allen; ZONE 6 -Iaquiennes; ZONE 7-St. Charles

DECISION NO. LA84-4059  
 Supersedes Decision No. LA84-4024, dated April 20, 1984 in 49 FR 16928.  
 DESCRIPTION OF WORK: Heavy and Highway Projects (does not include building structures in rest area projects).

Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
\$16.125	2.95	14.29	2.42
\$14.50	2.70	9.11	2.42
12.30	1.70	11.19	2.42
13.67	2.32	11.19	2.43
		12.13	2.43
14.31	2.60		
12.97	1.78		
13.15	1.60	8.52	1.08
9.11	1.60	9.57	1.08
11.19	1.60	8.20	1.80
11.19	1.60	9.46	1.04
11.19	2.60	5.99	1.04
12.28	2.60	7.55	1.04
		7.55	1.08
13.22	1.68		
12.90	.85		
14.94		16.15	1.68
8.07			+9%
10.15	1.68		
11.42	1.68		
		75&JR	1.68
16.15	1.68		+9%
16.15	1.68		
15.25	2.40		
15.75	2.40	65&JR	1.68
	4%		+9%
	4%	45&JR	1.68
17.70	2.00+		+9%
	3-5/10%	50&JR	1.68
18.20	2.00+		+9%
	3-5/10%		
14.54	2.43	15.25	2.40+
12.95	2.56		3-1/4%
		15.75	2.40+
			3-3/4%
		12.65	2.40+
			3-3/4%

Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
17.70	2.00+	13.235	2.115
3-1/10%		13.61	2.115
18.20	2.00+	15.535	2.115
3-1/10%			
15.70	2.00+	10.50	1.10
3-1/10%			
		16.80	2.43
		15.19	3.14
		17.98	3.00
		12.98	2.50
		13.23	2.50
		12.73	2.50
		12.73	2.50
		12.73	2.50
		14.56	2.50
		14.81	2.50
		14.31	2.50
		10.73	2.50
		8.59	2.50
		13.33	2.20
		13.58	2.20
		13.08	2.20
		9.55	2.20
		7.64	2.20
		14.56	2.50
		14.81	2.50
		14.31	2.50
		10.73	2.50
		8.59	2.50
		9.36	2.50
		9.61	2.50

LINE CONSTRUCTION (CONT'D)  
 ZONES 3, 4 & 5:  
 GROUP 1-Linemen; ops.  
 GROUP 2-Cable Splicer  
 GROUP 3-Groundmen

POWER EQUIPMENT OPERATORS: (Cont'd)  
 GROUP 3  
 GROUP 4  
 GROUP 5  
 ZONES 5 & 6:  
 GROUP 1  
 GROUP 2  
 GROUP 3  
 GROUP 4  
 GROUP 5  
 ZONE 7:  
 GROUP 1  
 GROUP 2  
 GROUP 3  
 GROUP 4  
 GROUP 5

PAINTERS:  
 ZONES 1, 6 & 7:  
 GROUP 1-Painters  
 GROUP 2-Spray  
 GROUP 3-Industrial  
 ZONE 2 & Allen Parish  
 (northeast corner north  
 of Rt. 10)-All  
 painters  
 ZONES 3, 4 & 5 (Allen  
 Par. except northeast  
 corner):  
 Bridges, water towers,  
 radio & TV towers  
 All other work

SHEET METAL WORKERS:  
 ZONE 2  
 ZONES 3, 4 & 5  
 TRUCK DRIVERS:  
 ZONE 1:  
 Asphalt overlay  
 Projects  
 All other work  
 ZONE 2  
 ZONE 3  
 ZONE 4  
 ZONE 5  
 ZONE 6  
 ZONE 7

PLUMBERS & PIPEFITTERS:  
 ZONES 1, 6 & 7:  
 ZONE 2  
 ZONES 3, 4 & 5  
 POWER EQUIPMENT OPERATORS:  
 ZONE 1:  
 Asphalt overlay  
 Projects:  
 GROUP 1  
 GROUP 2  
 GROUP 3  
 GROUP 4  
 GROUP 5  
 Other work:  
 GROUP 1  
 GROUP 2  
 GROUP 3  
 GROUP 4  
 GROUP 5  
 ZONE 2 - GROUP 1  
 GROUP 2  
 GROUP 3  
 GROUP 4  
 GROUP 5  
 ZONE 3 - GROUP 1  
 GROUP 2  
 GROUP 3  
 GROUP 4  
 GROUP 5  
 ZONE 4 - GROUP 1  
 GROUP 2

WELDERS: Receive rate  
 prescribed for craft  
 performing operation  
 to which welding is  
 incidental.

SUPERSEDEAS DECISION

STATE: Missouri  
 COUNTY: Greene  
 DECISION NO.: M084-4060  
 DATE: Date of Publication  
 SUPERSEDES Decision No. M083-4086 dated January 6, 1984 in 49 FR 993.  
 DESCRIPTION OF WORK: Building projects, (excluding single family homes and apartments up to and including 4 stories).

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - 60 ton crane & over, crane with 125 ft. boom  
 GROUP 2 - Crane with 175 ft. boom  
 GROUP 3 - Crane all types; stabilizers; pulls all types; concrete mixer equipment; 3 drums (or more) stabilizers; ditching or trenching machines (track type); 1 yd. & over; all pavers; all types; ditches or trenching machines (track type); mechanics & equipment; idlers; well point system; hoist, 2 drums or more; hoist, 1 drum, 40 vertical ft. or more; scrapers, bulldozers, rubber tired or track other than farmtype; scoompobles; motor, patrol, gradeall, rollers on hot mix; asphalt paving machines, front end loaders, other than farmtype, 1 cu. yd. or over; shovels & backhoes, all types & equivalent equipment; piledrivers; sideboom cats  
 GROUP 4 - 2 drums & single drum stabilizers; front end loaders under 1 cu. yd.; A-frame truck except when handling steel or pipe; finishing machines (concrete); power subgraders; 2 tractors (crawler type); 1 drum hoist under 40 vertical ft.; firemen; concrete spreader; pugmill; bituminous distributor on surface treatment & equivalent equipment; bullfloats & equivalent equipment; job grease man; unit op.; work boats not requiring licensed ops.; inboard-outboard motored crew boats; concrete mixer under 1 yd.; spray curing machines; roller on subgrade; 1 air compressor over 125 cu. ft.; form graders; asphalt finisher screed man; pump over 4"; scale op.; crusher op.; concrete jointing machines; concrete saw; tack machines & equivalent equipment; pumpercrete; electric elevator (inside); oiler-driver; farmtype rubber tired tractor, with attachment, except backhoes; kolum buff & similar equipment; form lifts 10 ton capacity & under; batch, plant op., oiler on crane using air to drive piles, fireman operating steam valve, unit ops.; oiler-driver  
 GROUP 5 - Oiler

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(i)(A)).

Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
16.92	2.25	13.13	2.60
17.345	3.25	12.65	2.60
13.62	1.45	12.05	2.60
13.13	1.60	11.45	2.60
13.38	1.60		
12.75			
14.55	98+	10.50	c+1.10
14.95	1.89+		
	1.89		
16.89	a+3.69	10.55	c+1.10
50%JR			
70%JR			
a+2.69			
b			
16.50		10.65	c+1.10
14.35	3.25	10.70	c+1.10
10.20	1.95		
10.48	1.95		
10.63	1.95		
10.80	1.95		
13.07	1.45		
13.73	1.28		
14.23	1.28		
12.75			
15.52	1.35		
12.00	.66		
16.18			
10.85	1.95		

POWER EQUIPMENT OPERATORS:  
 Group 1 Warehouseman, pickup driver, flatbed, single axle, dump truck-single  
 Group 2 & double axle, oiler,  
 Group 3 greaser  
 Group 4 Flat bed-double axle, wheel tractor (when used for towing), semi-truck drivers and low boys  
 TRUCK DRIVERS:  
 Warehouseman, pickup driver, flatbed, single axle, dump truck-single & double axle, oiler,  
 greaser  
 Flat bed-double axle, wheel tractor (when used for towing), semi-truck drivers and low boys  
 Heavy hauling, A-frame and winch trucks, fork trucks, hydro-lift, hydraulically operator aerial lifts  
 Mechanics

Asbestos Workers  
 Boilermakers  
 Bricklayers, Stonemasons & Tuck Pointers  
 Carpenters  
 Millwrights & Pile-drivers  
 Cement Masons  
 Electricians  
 Cable Splicers  
 Elevator Constructors;  
 Elevator Constructors, Prob. Helpers  
 Helpers  
 Glaziers, Outside Ironworkers  
 Laborers:  
 Group 1  
 Group 2  
 Group 3  
 Group 4  
 Marble Masons, Tile Layers & Terrazzo Workers  
 Painters:  
 Brush & Roller  
 Spray, Sandblasting, Tapers, & Paperhangers  
 Plasterers  
 Plumbers & Pipefitters  
 Roofers  
 Sheet Metal Workers  
 Tile Finishers

SUPERSEDES DECISION

STATE: Missouri  
 COUNTY: Jasper, McDonald & Newton  
 DECISION NUMBER: MO84-4098  
 DATE: Date of Publication  
 SUPERSEDES DECISION No. MO84-4096 dated January 13, 1984 in 49 FR 1850.  
 DESCRIPTION OF WORK: Building projects (excluding single family homes and apartments up to and including 4 stories)

Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
16.92	2.25	10.80	.95
17.345	3.25	10.90	.95
13.00	1.70	11.17	.95
12.27	1.50	11.13	.95
12.52	1.50	11.17	.95
13.09	1.67+	11.17	.95
	8%		
16.89	2.69+a		
708JR	2.69+a		
508JR			
15.04	.25		
14.60	2.67		
17.03	1.00+		
	8-1/2%		
16.24	1.00+		
	8-1/2%		
11.03	1.00+		
	8-1/2%		
11.91	1.00+		
	8-1/2%		
13.02	.60		
13.52	.60		
13.05			
13.72	2.13		
12.00	.66		
16.18	1.95		
10.20	1.75		
10.65	1.75		
13.13	2.60		
12.65	2.60		
12.05	2.60		
11.45	2.60		

TRUCK DRIVERS:  
 Pick-up or station wagon  
 Flat bed; dump under 5 tons  
 Dump, tandem (over 5 tons; winch, semi-trailer; and lowboy  
 Transit mix  
 Euclids or other similar equipment

ASBESTOS WORKERS  
 BOILERMAKERS  
 BRICKLAYERS; STONEMASONS  
 CARPENTERS:  
 Carpenters and Lathers  
 Millwrights and Pile-drivers  
 ELECTRICIANS  
 ELEVATOR CONSTRUCTORS:  
 Mechanics  
 Helpers  
 Probationary Helpers  
 GLAZIERS  
 IRONWORKERS  
 LINE CONSTRUCTION:  
 Lineman  
 Linemen Operators  
 Groundman  
 Groundman, Powderman  
 PAINTERS:  
 Brush, Roller, Tapers,  
 Floor Tile and Carpet Layers, Paperhangers  
 Spray  
 PLASTERERS  
 PLUMBERS & PIPEFITTERS  
 ROOFERS  
 SHEET METAL WORKERS  
 LABORERS:  
 General Laborers  
 Mason & Plaster Tenders  
 & Powderman  
 POWER EQUIPMENT OPERATORS:  
 Group 1  
 Group 2  
 Group 3  
 Group 4

LABORERS CLASSIFICATION DEFINITIONS

- Group 1 - Common labor, handling and carrying of reinforcing steel pumps of all types and heaters
- Group 2 - Asphalt raker, crusher feeder, cement finisher tender, jack-hammer and air tool operator, power tamper operator, pipe layer (concrete or clay), sand blast and gunnite nozzlemen, vibrator operator, wagon drill operator, cat-drill operator, and all work of a semi-skilled nature not listed
- Group 3 - Mason laborers: including plasterers tender, mortar mixer and fork lift operator
- Group 4 - Powderman

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

- Group 1 - Crane, dragline, derrick, drum or tower hoist (2 drum), power shovel or back hoe (on tracks), piledriver, power blade, motor patrol, mechanic, hydraulic, self-propelled crane, stinger or cherry picker crane
- Group 2 - Bulldozer, dirt scoop or pan, elevating grader, drum or tower hoist (1-drum), loader (track or rubber tire), tractor pusher, roller (asphalt), tractor or backhoe (on rubber tires), tractor (compaction roller or pull blade track)
- Group 3 - Fork lift, roller, tractor (compaction roller or pull blade-rubber tire), distributor, (bituminous), finishing machine (concrete paving), concrete saw (self-propelled), air compressor (600 cu. ft. or over)
- Group 4 - Oiler, oiler-driver

FOOTNOTE: a - Employer contributes 8% of basic hourly rate for over 5 years' service; and 6% of basic hourly rate for 6 months to 5 years Vacation Pay Credit, also 7 Paid Holidays.

b - 1 Paid Holiday (Labor Day)  
 c - \$51.00 per/week

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (3) CFR, 5.5 (a)(1)(ii).



## LABORERS CLASSIFICATION DEFINITIONS PETTIS COUNTY

GROUP 1 - Carpenter tenders; track men; wreckers (alterations or entire project); reinforcing carriers; all other general laborers  
 GROUP 2 - Plumber laborers; stonemasons tenders; air tool operators; sewer work; water lines; conduit pipe; drain tile & duct lines; batter board man or pipe & ditch work; pier hole men working below ground; vibrator man; scaleman; jackhammer; chipping hammer operators; material batch hopper man; spreader or screed man on asphalt machine; brush feeders on pulverizers; swinging scaffold; cement handlers (bulk or sack); laser beam man; chain or concrete saw  
 GROUP 3 - Plaster tenders; hod carriers; brick tenders; cutting torch & burner men; asphalt rakers; barco tamper; jackson or any similar tamps; power buggy operator; powderman; mastic kettlemen; sandblasting & gunnite nozzle men; head pipe layer on sewer work; men working in tunnels; head formsetters & stringline men; hot tar applicator

## LABORERS CLASSIFICATION DEFINITIONS SALINE COUNTY

GROUP 1 - Common labor, wire mesh handlers or setters, carpenter tenders; trackmen; flagmen; signalmen; salamander tenders; floor cleaners; land-scape men; sod layers; wreckers (for alteration or entire projects)  
 GROUP 2 - Plumber laborers (conduit pipe, sewerwork, drain tile & duct lines, digging & back filling); power tool operators; pier hole diggers (over 10 ft.); vibrator; jackhammer & chipping hammer operators; chain saw operators; concrete saw operators; brush feeders on pulverizers; reinforcing steel handlers; air tamp operators; ditch witch operators; swinging scaffolds; cutting torch or burner men; georgia buggies (self-propelled); fork lift, hoseman; insulation men  
 GROUP 3 - Fork lift (masonry); brick tenders; plasterer tenders; stone mason tenders; barco, jackson or similar tamp operators; asphalt raker; powdermen; mastic hot kettlemen; sandblasting & gunnite nozzle men; wagon & churn drill operators

## POWER EQUIPMENT OPERATORS:

GROUP 1 - Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; back fillers; backhoe barber-greene loader; blade power; boats-power; boilers (2); boring machines; cableways; cherry pickers; chip spreader; concrete ready-mixed plant, portable (job site); concrete mixer paver; crane-overhead; crusher; rock; derricks and derricks cars (power operated); ditching machines; dozers; dredges - any type power; grade-all similar type; hoist, endless chain-power operated with power travel; loaders; mechanic and welder; mucking machine; orange peels; pumps - material; push cats; scoops; self-propelled rotary drill; shovel, power; side boom; skimmer scoop; testhole machine; throttle man

## POWER EQUIPMENT OPERATORS: (CONT'D):

GROUP II - Boilers (1); Brooms - power operated; chip spreader (front man); clef plane operator; compressors (1) 125; or over; concrete saws, self-propelled; crab - power operated; curb finishing machine; fireman on rigs; flex plane, floating machine; form grader; greaser; hoist, endless chain - power operated; hopper - power operated; hydra hammer; lad-a-vator - similar type; rollers; siphons, jets, and jennies; sub-grader; tractors over 50 h.p.; compressors (2) 125; ft. or over not more than 20' apart; compressors-tandem; compressors single, truck mounted; elevator; finishing machine  
 GROUP III:  
 (a) Ollers  
 (b) Fork lift - masonry  
 (c) Oiler driver  
 (d) A-frame trucks; fork lift-all types (except masonry); mixers (w/side loaders); pumps (w/well points) dewatering systems, test or pressure pumps; tractors (except when hauling material) less than 50 h.p.

GROUP IV  
 Clamshells, 100 ft. of boom or over (excluding jib); crane or rigs, 100 ft. of boom or over (excluding jib); draglines, 100 ft. of boom or over (excluding jib); pile drivers, 100 ft. of boom or over (excluding jib)

## GROUP V

Hoists-each additional drum over 1 drum

## GROUP VI

Crane or rigs, over 200 ft. of boom

## GROUP VII

Ready Mixed Concrete Plants:

- (a) Crane operator
- (b) Loader operator & plant man
- (c) Conveyor operator

## GROUP VIII

Master Mechanic

## GROUP IX

Crane-tower or climbing

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDES DECISION

STATE: PENNSYLVANIA

COUNTIES: LEBANON, LYCOMING, NORTHUMBER-

DECISION NO. PA84-3037

DECISION NO. PA84-3037

Supersedes Decision Nos: PA81-3068, dated September 25, 1981, in 46 FR 47403; PA81-3090, dated December 18, 1981, in 46 FR 61813; PA81-3073, dated October 2, 1981, in 46 FR 48853; PA81-3076, dated October 9, 1981, in 46 FR 50236; PA81-3081, dated October 23, 1981, in 46 FR 52808.

DESCRIPTION OF WORK: Building Erection and Foundation Excavation, (does not include single family homes or apartments up to and including 4 stories), (Excluding Sewage and Water Treatment Plant Projects.)

LAND, SCHUYLKILL & SULLIVAN

DATE: DATE OF PUBLICATION

	Basic Hourly Rates	Fringe Benefits
<b>ASBESTOS WORKERS</b>		
Zone 1	17.91	2.04
Zone 2	16.33	2.31
Zone 3	20.88	2.415
<b>BOILERMAKERS</b>		
Zone 1	14.22	1.73
Zone 2	12.25	2.565
Zone 3	14.00	1.95
Zone 4	13.84	2.91
Zone 5	14.65	2.06
<b>CARPENTERS</b>		
Zone 1	14.50	2.55
Zone 2	13.72	2.55
Zone 3	14.99	2.55
<b>CEMENT MASON:</b>		
Zone 1	13.79	1.65
Zone 2	13.87	2.60
Zone 3	11.90	2.01
Zone 4	13.20	2.91
Zone 5	13.84	2.91
<b>ELECTRICIANS</b>		
Zone 1	13.06	3.574
Zone 2	15.41	1.834
Zone 3	15.75	3.174
Zone 4	15.99	1.054
Zone 5	16.46	1.894
Zone 6	15.93	1.834
<b>ELEVATOR CONSTRUCTORS</b>		
Zone 1	15.90	3.294
Zone 2	11.13	3.294
Zone 3	7.95	3.294
<b>ELEVATOR CONSTRUCTORS HELPERS</b>		
Zone 1	13.04	2.90
Zone 2	14.04	1.465
Zone 3	13.51	1.66

	Basic Hourly Rates	Fringe Benefits
<b>IRONWORKERS:</b>		
Zone 1	17.265	4.25
Zone 2	17.40	3.75
Zone 3	17.85	3.60
Zone 4	17.85	3.60
<b>LABORERS</b>		
Zone 1	9.75	1.20
Zone 2	9.85	1.20
Zone 3	9.10	1.50
Zone 4	9.25	1.50
Zone 5	10.45	1.53
Zone 6	10.92	1.53
Zone 7	9.85	1.53
Zone 8	10.92	1.53
Zone 9	9.10	1.20
Zone 10	9.30	1.20
Zone 11	12.87	2.80
Zone 12	13.27	2.80
Zone 13	13.07	2.80
Zone 14	13.19	2.80
Zone 15	14.50	2.55
Zone 16	10.75	.66+c
<b>LATHERS</b>		
Zone 1	15.99	.80+3
Zone 2	11.29	3/8
Zone 3	10.00	3/8
Zone 4	15.06	.80+3
Zone 5	10.54	3/8
Zone 6	9.04	.80+3
Zone 7	9.04	3/8

	Basic Hourly Rates	Fringe Benefits
<b>MARBLE SETTERS</b>		
Zone 1	14.22	1.73
Zone 2	14.00	2.91
Zone 3	13.84	2.91
Zone 4	14.65	2.06
Zone 5	16.57	2.55
<b>MILLWRIGHTS</b>		
Zone 1	12.30	2.70
Zone 2	13.96	2.70
Zone 3	12.96	2.70
Zone 4	12.15	2.25
Zone 5	13.20	2.25
Zone 6	13.20	2.25
Zone 7	11.97	1.30
Zone 8	12.42	1.30
Zone 9	12.72	1.30
Zone 10	14.82	6.16+d
<b>PAINTERS:</b>		
Zone 1	14.20	.01
Zone 2	13.84	2.91
Zone 3	13.79	1.65
Zone 4	13.87	2.60
Zone 5	16.72	2.44
Zone 6	15.24	3.95
Zone 7	17.05	2.39
Zone 8	13.38	3.59
<b>PLUMBERS</b>		
Zone 1	16.72	2.44
Zone 2	15.24	3.95
Zone 3	17.05	2.39
Zone 4	13.38	3.59
<b>POWER EQUIPMENT OPERATORS:</b>		
Group 1	16.52	26.68
Group 2	16.23	26.68
Group 3	15.17	26.68
Group 4	14.52	26.68
Group 5	13.26	26.68
Group 6	12.36	26.68
<b>ROOFERS:</b>		
Zone 1	14.55	2.00
Zone 2	12.76	2.10
Zone 3	13.92	2.55

	Basic Hourly Rates	Fringe Benefits
<b>SHINGLE, SLATE, AND TILE MECHANIC II (FOR SHINGLE, SLATE, OR TILE WORK) - HANDLES AND TRANSPORTS ALL MATERIALS, TOOLS AND EQUIPMENT; CLEAN-UP DEBRIS</b>	13.92	2.55
<b>SHIELDING METAL WORKERS</b>		
Zone 1	8.25	2.93+e
Zone 2	15.73	4.92
Zone 3	15.92	2.00
Zone 4	16.92	3.23
Zone 5	12.29	2.55
<b>SOFT FLOOR LAYERS</b>		
Zone 1	16.72	2.44
Zone 2	14.79	4.35
Zone 3	17.05	2.39
Zone 4	18.38	3.59
<b>TERRAZZO WORKERS</b>		
Zone 1	14.15	2.02
Zone 2	14.00	1.95
Zone 3	12.84	2.91
Zone 4	14.35	2.06
<b>TILE SETTERS</b>		
Zone 1	14.15	2.02
Zone 2	14.00	1.95
Zone 3	12.84	2.91
Zone 4	14.35	2.06
<b>TRUCK DRIVERS</b>		
Zone 1	9.10	1.50
Zone 2	9.47	f/g

## DECISION NO. PA84-3037

## AREA COVERED BY IRONWORKERS ZONES

- Zone 1 - Lebanon, Lycoming, Northumberland Counties
- Zone 2 - Schuylkill County
- Zone 3 - Sullivan County

## AREA COVERED BY LABORERS ZONES

- Zone 1 - Lebanon County
- Zone 2 - Lycoming County; Northumberland County; North of Susquehanna River
- Zone 3 - Northumberland County; South of the Susquehanna River
- Zone 4 - Schuylkill County
- Zone 5 - Sullivan County

## AREA COVERED BY LINE CONSTRUCTION

- Zone 1 - Lycoming, Luzerne, Northumberland and Schuylkill Counties
- Zone 2 - Lebanon County

## AREA COVERED BY MARBLE SETTERS ZONES

- Zone 1 - Lebanon County
- Zone 2 - Northumberland County
- Zone 3 - Schuylkill County
- Zone 4 - Sullivan County

## AREA COVERED BY PAINTERS ZONES

- Zone 1 - Luzerne, Northumberland, Sullivan Counties, Twps. in Schuylkill County, North Union, East Union, Union, Mahanoy, West Mahanoy, Butler, Kline, Delano, Ryan, Rush, Rahn, West Penn., and City of Tamaqua
- Zone 2 - Remainder of Schuylkill county; and (East of Route 72 in Lebanon County)
- Zone 3 - West of Route 72 in Lebanon County

## LABORERS CLASSIFICATIONS DEFINITIONS

## Zone 1

Class 1 - General Laborers  
 Class 2 - Operator of Jackhammer, paving breading and other pneumatic, electrical and mechanical tools, laying of all clay, terra cotta, ironstone vitrified concrete or non-metallic pipe and the making of joints for same, wagon drill operator, cofferdam (below 10') tunnel free air, handling and using cutting or burning torches in the wrecking of buildings blasters, plasterer tenders, mason tenders scaffold builders and removal of power buggies

## DECISION NO. PA84-3037

## AREA COVERED BY ASBESTOS WORKERS ZONES

- Zone 1 - Lebanon & Schuylkill
- Zone 2 - Lycoming, Northumberland & Sullivan

## AREA COVERED BY BRICKLAYERS &amp; STONE MASONS

- Zone 1 - Lebanon County
- Zone 2 - Lycoming County
- Zone 3 - Northumberland County
- Zone 4 - Schuylkill County
- Zone 5 - Sullivan County

## AREA COVERED BY CARPENTERS ZONES

- Zone 1 - Lebanon & Schuylkill Counties
- Zone 2 - Lycoming, Northumberland Counties; Remainder of Sullivan County
- Zone 3 - Benton Air Force Base, in Sullivan County.

## AREA COVERED BY CEMENT MASONS ZONES

- Zone 1 - East of Route 105, in Lebanon County
- Zone 2 - West of Route 105, in Lebanon County
- Zone 3 - Lycoming & Sullivan Counties
- Zone 4 - Northumberland County
- Zone 5 - Schuylkill County

## AREA COVERED BY ELECTRICIANS ZONES

- Zone 1 - Lycoming County; Western part of Sullivan County; Delaware, Lewis and Trubut Twps., in Northumberland County.
- Zone 2 - Lebanon County; Pine Grove and Tremont Twps. in Schuylkill County
- Zone 3 - Remainder of Northumberland and Schuylkill Counties
- Zone 4 - Eastern part of Sullivan County
- Zone 5 - Townships in Schuylkill County, North Manheim, South Manheim, West Brunswick, Wayne, Washington, Pottsville, Schuylkill Haven
- Zone 6 - Townships in Schuylkill County North Union, East Union, West Mahanoy, (excluding Frackville Borough), Mahanoy, Delano, Kline, Rush, Ryan, Blythe, Schuylkill, Walker Rahn, East Brunswick and West Penn.

## AREA COVERED BY GLAZIERS ZONES

- Zone 1 - Sullivan County
- Zone 2 - Schuylkill County; Twps. in Northumberland County, Edgewell, Ralph, Knulpmont, Coal, Marion Heights; Twps. in Berks County; Bethel, Jackson, Millcreek, Lebanon, E. of Rte. 72 Heidelberg and Richland.
- Zone 3 - Remainder of Lebanon and Northumberland Counties.

## LABORERS CLASSIFICATION DEFINITIONS (CONTINUED)

## Zone 2

Class 1 - General Laborers

Class 2 - Operator of Jackhammer, paving and other pneumatic electrical and mechanical tools, laying of all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe and the making of joints for same wagon drill operator, cofferdam (below 10'). Tunnel free air, handling and using cutting or burning torches in the wrecking of buildings, blasters, plasterer tenders, mason tenders, scaffold builders and removal of power buggies

## Zone 3

Class 1 - General Laborers: Air, fuel and electric tool operators and all other pneumatic and mechanical tools, including blowpipe and vacuum cleaners. Caisson workers (top men), pipelayers for all clay, terra cotta, ironstone, vitrified concrete on non-metallic pipe & making of joints for same. Power-buggy, precast slab placers & signal men, blaster helper, excavation of all foundation, digging of trenches, piers and manholes. Wrecking and moving of all structures. Underpinning & shoring, stripping, dismantling, oiling & moving of concrete forms, loading and carrying, of reinforcing steel, handling & distribution of lumber, and all other building materials to stock piles, unloading, carrying, distribution, and laying of precast concrete slabs and planks for flooring & roofing, general cleanup & removal of refuse, debris, and all scrap material(s), vibrator operator (concrete placing - whole power is supplied by compressed air, electric, gasoline & any other means):

Class 2 - Semi-Skilled: Caisson worker (bottom men), blasters, wagon air track and diamond point drill operators, burning torches, green cutting machine (nozzle men), and steam jenny. Plasterer & cement mason tenders, machine mixers, plasterer pump and scaffold builders (excluding masonry scaffolding). Sand blasting (nozzle man):

Class 3 - Nursery Workers, window washers, floor scrubbers, and watchmen. Tenders of propane gas burners, salamander(s), smudge pots, tool room workers. Fire watch:

Class 4 - Mason Tenders: (Brick & Block), machine mixers, motorized stockers, scaffold builders (masonry), motor pump, conveyors, mechanical cleaners and sandblasting for masonry and masonry equipment.

## Zone 4

Class 1 - General Laborers

Class 2 - Operator of jackhammer, paving breaking & other pneumatic, electric & mechanical tools laying of all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe & the making of joints for same wagon drill operators, cofferdams (below 10'), tunnel free air handling & using cutting or burning torches in the wrecking of building, blasters, plasterer-tenders, mason tenders scaffold builders and removal & power buggies

## DECISION NO. PA84-3037

## LABORERS CLASSIFICATION DEFINITIONS (CONTINUED)

## Zone 5

Class 1 - General Laborers

Class 2 - Mason Tenders including scaffold builders  
 Class 3 - Semi-skilled: Pneumatic, electrical & mechanical tool ops., under the jurisdiction of the laborers - 2" pumps-non-metallic pipelaying & making of joints clay, terra cotta, ironstone, vitrified concrete, handling of burning torches, asphalt or other hot materials, cement finishers & blaster helpers, power buggies, walk along hoist  
 Class 4 - Plasters tenders, blasters & wagon drill operators

## POWER EQUIPMENT OPERATORS CLASSIFICATIONS DEFINITIONS

Group 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helicopters, machines similar to the above

Group 2: All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoist with two towers, paver 21k and over, all types overhead cranes, building hoists (double drum) gradalls, mucking machines in tunnel, all front end loaders 3-1/2 c.y. and over, tandem scrapers, pipin type backhoes, boat Captains, batch plant operators (concrete) drills, self-contained rotary drills, fork lifts 20 ft. lift and over machine to the above

Group 3: Covenyors, building hoist (single drum) scrapers and tournapulls, spreaders, high or low pressure boilers, concrete pumps, well drillers, bulldozers and tractors, asphalt plant engineers, roller (high grade finishing), ditch witch type trencher, all loaders under 3-1/2 c.y. mechanic welders, motor patrols, drill helpers self-contained rotary drills, helpers self-contained rotary drills, core drill operator, forklift trucks under 20 ft. lift, machines similar to the above

Group 4: Welding machines, well points, compressors, pumps, heaters, tram tractors, form line graders, fine grade machines, road finishing machines concrete breaking machines, rollers, seam pulverizing mixer, power broom, seeding spreader, tireman (for power equipment) machines similar to above.

Group 5: Fireman, grease truck

Group 6: Oilers and deck hands (personnel boats), core drill helper

## AREA COVERED BY PLASTERERS ZONES

Zone 1 - Lycoming & Sullivan Counties

Zone 2 - Northumberland

Zone 3 - Schuylkill

Zone 4 - Lebanon County (East of Route 501)

Zone 5 - Lebanon County (West of Route 501)

DECISION NO. PA84-3037

## AREA COVERED BY TRUCK DRIVERS ZONES

- Zone 1 - Lycoming County
- Zone 2 - Lebanon County

## PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

## FOOTNOTES:

- a. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.
- b. Six paid holidays: A through F, plus the Friday after Thanksgiving Day.
- c. 8 Paid holidays, A through F, and Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 full days for the employer during the 120 days prior to the holiday and is available for work the days preceding and following the holiday.

d. Paid Holidays: Washington's Birthday; Good Friday; Memorial Day; Labor Day; Presidential Election Day; Veterans Day; Thanksgiving Day and Christmas Day.

e. Paid Holiday: Independence Day;

f. \$93.03 per month for employees who have worked sixty hours or more during the month.

g. \$57.89 per month for employees who have worked sixty hours or more during the month.

h. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, provided the employee works the day before and after the holiday.

Welders - Rate for craft

\*Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).\*

DECISION NO. PA84-3037

## AREA COVERED BY PLUMBERS ZONES

- Zone 1 - Lycoming & Sullivan Counties
- Zone 2 - Schuylkill County
- Zone 3 - Northumberland County; Lebanon County, (West of Route 501)
- Zone 4 - Lebanon County (East of Route 501)

## AREA COVERED BY ROOFERS ZONES

- Zone 1 - Lycoming & Sullivan Counties; Remainder of Northumberland County Townships in Schuylkill County, Barry Branch, Butler, East Union, Eldred, Foster, Fraily, Hegins, Hubley, Kline, New Castle, North Union, Porter, Hahn, Reilly, Rush, Fremont, Union, Upper Mahantango, West Penn:
- Zone 2 - Townships in Lebanon County; Annville, Cold Springs, East Hanover, North Annville, North Cornwall, North Londonderry, South Annville, South Londonderry, Union, West Cornwall: Townships in Northumberland County: Coal, East Cameron, Jackson, Jordan, Little Mahony, Lower Augusta, Upper Mahony, Point Rockfeller, Shamokin, Upper Mahony, Washington, West Cameron, Zerbe
- Zone 3 - Remainder of Lebanon County; and Remainder of Schuylkill County.

## AREA COVERED BY SHEET METAL ZONES

- Zone 1 - Lebanon County
- Zone 2 - Lycoming, Northumberland, Schuylkill & Sullivan Counties

## AREA COVERED BY STEAMFITTERS ZONES

- Zone 1 - Lycoming & Sullivan Counties
- Zone 2 - Schuylkill County
- Zone 3 - Northumberland County; Lebanon County, (West of Route 501)
- Zone 4 - Lebanon County; (East of Route 501)

## AREA COVERED BY TERRAZZO WORKERS ZONES

- Zone 1 - Lebanon County
- Zone 2 - Northumberland County
- Zone 3 - Schuylkill County
- Zone 4 - Sullivan County

## AREA COVERED BY TILE SETTERS ZONES

- Zone 1 - Lebanon County
- Zone 2 - Northumberland County
- Zone 3 - Schuylkill County

SUPERSEDES DECISION

STATE: Texas COUNTY: Bowie  
 DECISION NO. TX84-4057 DATE: Date of Publication  
 Supersedes Decision No. TX83-4079, dated 10/21/83 in 48 FR 48910  
 DESCRIPTION OF WORK: Building projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway General Wage Determination to paving & Utilities incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	16.71	2.935
BOLTMEN	16.125	2.95
BRICKLAYERS	8.15	.79
CARPENTERS	12.20	.05
Millwrights	15.15	.05
Filedriversmen	13.25	.05
CEMENT MASONS	6.82	
ELECTRICIANS	14.52	1.50+
		3-1/4%
ELEVATOR CONSTRUCTORS:		
Mechanics	16.025	2.69+a
70%JR	7.75	2.69+a
50%JR	5.30	
GLAZIERS	9.40	2.55
IRONWORKERS:	10.75	2.55
Sodmep	3.70	
All other classification	15.10	1.00+
LABORERS, UNSKILLED	15.55	"
LINE CONSTRUCTION:		
Linemen		3-1/2%
Cable splicers		
Hole digger op., heavy equip. ops. (or pole cat equivalent); powderman	13.74	
Line truck driver (winch)	12.38	
Jackhammer man	11.33	
groundman	10.12	
Truck driver (flat bed, ton & half & under)	10.72	

PAINTERS & PIPEFITTERS 5.50 1.85  
 PLUMBERS & PIPEFITTERS 14.60 1.85  
 ROOFERS 5.71  
 SHEET METAL WORKERS 5.99  
 SOFT FLOOR LAYERS 7.50  
 SPRINKLER FITTERS 16.17 3.23  
 TRUCK DRIVERS 5.00  
 POWER EQUIPMENT OPERATOR:  
 GROUP 1 7.265 2.30  
 GROUP 2 15.17 2.30  
 GROUP 3 15.57 2.30  
 WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.  
 FOOTNOTE FOR ELEVATOR CONSTRUCTORS  
 a - 1st 6 mos.-none; 6 mos. to 3 yrs.-.68; over 3 yrs.-.88 of basic hourly rate; Also following 7 paid Holiday days: New Years' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Day  
 Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Oiler-Fireman  
 GROUP 2 - Air compressor, Pumps, Welding Machines, Throttle Valves, Light Plants, Conveyor, Wagon Drill, Elevators Building, Form Graders, Hoist, Single Drum, Ford Tractor including blade & mower on rear; Mixers, less than 14 cu. ft.; Screening Plants; Crushing Plants; Fork Lifts (short under 25 ft.); Concrete Pumps (all types); Bobcat type equipment  
 GROUP 3 - Ford Tractor or like with any attachment (except blade & mower on rear); Drilling Machine (all types); Scoomobile; Hoist, two drums or more; Forklifts (over 25 ft.); Winch truck; Six Wheel Truck, when used continuously for 5 days; Mixmobiles; Locomotives; Mixer, 14 cu. ft. or over; Blade Graders, self-propelled; Cableways; Crane-power operated to 100 ft.; Barricks, Power operated (all types); Gadall; Hy-Hop-To; Paving Mixers (all types); Pile Drivers; Mobile Concrete Mixers over 14 cu. ft.; Bulldozers; Loaders; Tractors; Scrapers & Pulls; Welders; Trenching Machines; Roller, ten tons or over; Air Compressors & Air Tugger; BOLLERS, two or more fired by one man

SUPERSEDES DECISION

STATE: Texas COUNTY: Harrison  
 DECISION NO. TX84-4058 DATE: Date of Publication  
 Supersedes Decision No. TX80-4088, dated 11/7/80 in 45 FR 74364  
 DESCRIPTION OF WORK: Building projects (does not include single family homes & apartments up to & including 4 stories). (Use current heavy & highway General Wage Determination for Paving & Utilities incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS & STONEMASONS	\$13.06	
CARPENTERS	10.67	
ELECTRICIANS:	14.35	1.00+7-1/4%
Cable splicers	14.70	1.00+7-1/4%
GLAZIERS	9.55	
IRONWORKERS	9.47	
LABORERS	5.37	
LATHERS	12.34	
PAINTERS & PIPEFITTERS	11.50	
PLUMBERS & PIPEFITTERS	10.16	
ROOFERS	9.16	
SHEET METAL WORKERS	9.55	
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

# **Federal Register**

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Friday  
October 5, 1984

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**Part III**

## **Environmental Protection Agency**

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**Issuance of Final General NPDES Permit  
for Portions of Deep Seabed Mining  
Exploration Activities in the Pacific  
Ocean; Notice**

## ENVIRONMENTAL PROTECTION AGENCY

(OW-FRL-2685-8)

### Issuance of Final General NPDES Permit for Portions of Deep Seabed Mining Exploration Activities in the Pacific Ocean

**AGENCY:** Environmental Protection Agency, Region 9.

**ACTION:** Notice of Final General NPDES Permit.

**SUMMARY:** The Environmental Protection Agency (EPA) Regional Administrator of Region 9 is today issuing a final general National Pollutant Discharge Elimination System (NPDES) permit for certain discharges from vessels or other floating craft subject to the Deep Seabed Hard Mineral Resources Act (DSHMRA) engaged in deep seabed mining exploration activities under the DSHMRA in the Pacific Ocean. On August 29, 1983, EPA provided notice of a draft general NPDES permit (48 FR 39144-39152) for these discharges. A public hearing was held October 6, 1983 in San Francisco, California; the comment period closed October 20, 1983. This general permit establishes effluent limitations, standards, prohibitions and other conditions on discharges from these activities, except for any discharge from the initial mining tests which is not covered by this permit. The area to be covered by this general permit is located within that portion of the deep seabed in the Pacific Ocean between 110 degrees West and 180 degrees West longitude and 5 degrees North and 20 degrees North latitude.

This final general permit is based on the administrative record available for public review in Region 9 of the Environmental Protection Agency. The fact sheet and response to comments (Appendix A) sets forth the principal facts and the significant factual, legal, and policy questions considered in the development of the permit. A copy of the final permit (NPDES Number HIG100001) is published as required by 40 CFR 122.28(b)(2)(iii).

**EFFECTIVE DATE:** This general permit shall be effective on October 5, 1984. This general permit and authorization to discharge shall expire on October 5, 1989.

**ADDRESS:** Notification requirements and requests should be sent to the Regional Administrator in care of the Director, Water Management Division (W-1), Region 9, U.S. Environmental Protection Agency, Attention: Deep Seabed Mining General Permit, 215 Fremont Street, San Francisco, California 94105.

**FOR FURTHER INFORMATION CONTACT:** Eugene E. Bramley (W-5-1), Region 9, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105 (Telephone No. (415) 974-8330).

### FACT SHEET AND SUPPLEMENTARY INFORMATION

#### I. Background

##### A. General Permits

Section 402 (33 U.S.C. 1342) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*) (the Clean Water Act (CWA)) authorizes EPA to issue NPDES permits for the purpose of regulating the discharge of pollutants to navigable waters.

Section 301(a) of the CWA (33 U.S.C. 1311(a)) provides that the discharge of pollutants is unlawful except in accordance with a NPDES permit. EPA's regulations authorize the issuance of general NPDES permits to categories of discharges (40 CFR 122.28). EPA may issue a single general permit to a category of point sources located within the same geographic area whose discharges warrant similar pollutant control measures. The Director of an NPDES permit program (in this case the Regional Administrator) is authorized to issue a general NPDES permit, according to criteria contained in 40 CFR 122.28(a)(2)(ii), if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

As in the case of individual permits, violation of any condition of a general NPDES permit constitutes a violation of the CWA and subjects the discharger to the penalties specified in section 309 of the CWA (33 U.S.C. 1319). Any owner or operator authorized to discharge by a general permit may be excluded from coverage by applying for an individual permit. This request may be made by submitting a NPDES permit application together with the reasons supporting the request to the Regional Administrator. In addition, the Regional Administrator may require any person who is authorized to discharge under this general permit to apply for and obtain an individual permit. Any interested person may petition the Regional Administration to take this action.

However, an individual NPDES permit will not be issued for a deep seabed mining exploration facility to be covered by this general NPDES permit unless it can be demonstrated that inclusion under the general permit is clearly inappropriate. The Regional Administrator may consider the issuance of individual permits according to the criteria in 40 CFR 122.28(b)(2). These criteria include:

1. The discharge(s) is a significant contributor of pollution;
2. The discharger is not in compliance with the terms and conditions of the general permit;
3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
4. Effluent guidelines are subsequently promulgated for the point sources covered by the general permit;
5. A Water Quality Management Plan containing requirements applicable to such point sources is approved; or
6. The requirements listed in 40 CFR 122.28(a) and identified in the previous paragraphs are not met.

However, changes in pollutant control or abatement technology, effluent guidelines, or water quality standards affecting a large number of the covered point sources may be more appropriately addressed through modification, or revocation and reissuance of the final general permit.

##### B. Deep Seabed Mining Exploration Activities in the Pacific Ocean

Manganese nodules containing nickel, cobalt, manganese and copper have been the subject of commercial interest for nearly 25 years. In 1980, the Deep Seabed Hard Mineral Resources Act (DSHMRA) (30 U.S.C. 1401 *et seq.*) was enacted. The DSHMRA authorized the National Oceanic and Atmospheric Administration (NOAA) to issue licenses for exploration to United States citizens after July 1, 1981. In preparation of issuance of licenses for exploration, in September 1981 NOAA issued deep seabed mining regulations for exploration licenses at 15 CFR Part 970, a final Programmatic Environmental Impact Statement (PEIS) and a final Technical Guidance Document (TGD).

Section 109(e) of the DSHMRA (30 U.S.C. 1419(e)) provides that any discharge of a pollutant from a vessel or other floating craft subject to the DSHMRA is subject to the provisions of the Clean Water Act. A more detailed discussion of jurisdiction and the legal requirement to issue this permit is

contained in the response to comments contained in Appendix A.

EPA advised NOAA of its intention to issue a general NPDES permit to cover deep seabed mining exploration activities which are covered by NOAA deep seabed mining regulations for exploration licenses contained in 15 CFR Part 970. 46 FR 45892 (September 15, 1981).

On November 3, 1982, EPA Region 9 sent a letter to over 600 individuals indicating our intent to issue this general permit which would authorize discharges from vessels or other floating craft engaged in exploration activities, which are more fully described in the DSHMRA and NOAA regulations, including prospecting, mapping, surveying, collection of data and collection of samples. Discharges from initial test mining will not be authorized at this time.

NOAA has received applications from four consortia [Ocean Mining Associates (OMA), Ocean Management, Inc. (OMI), Kennecott Consortium (KCON) and Ocean Minerals Company (OMCO)] to engage in exploration activities in the Northeastern Equatorial Pacific Ocean within the seabed generally known as the Clarion-Clipperton Fracture Zone. 47 FR 27583-27584 (June 25, 1982), 47 FR 47903 (October 28, 1982), 48 FR 50386-50387 (November 1, 1983), 49 FR 3108 (January 25, 1984) and 49 FR 20359-20360 (May 14, 1984). On August 29, 1984, NOAA issued exploration licenses to three of the consortia.

On August 29, 1983, EPA provided notice of a draft general NPDES permit (48 FR 39144-39152) for these discharges. (The permit number of the proposed permit was H10111287. The permit number of the final permit is HIG100001.) A public hearing was held October, 1983 in San Francisco, California; the comment period closed October 20, 1983.

The application of the general permit program to a vessel or other floating craft used in deep seabed mining exploration operations is particularly appropriate as these facilities will have limited operations at any given location. These types of operations require a permitting decision which will allow maximum flexibility, i.e., the ability to move efficiently from one (1) location to another within the general permit area without having to apply for and obtain a new permit. The permittee engaged in exploration activities under the DSHMRA entering the areas to be covered by this permit will simply be required to notify EPA of their intent to be covered.

General permits eliminate, for EPA, the time consuming and resource intensive process of reviewing and evaluating individual permit applications, and similarly eliminate for the industry the regulatory burden of applying for and obtaining individual permits. In addition, environmental monitoring can be defined by area and imposed on all facilities operating within a permit area, providing EPA a better mechanism to evaluate possible environmental degradation.

## II. Nature of Discharges From Vessels or Other Floating Craft Engaged in Deep Seabed Mining Exploration Activities

This general permit authorizes and permits ten (10) separate types of discharges from a vessel or other floating craft subject to the DSHMRA engaged in exploration activities under 15 CFR Part 970, including, but not limited to exploration activities enumerated in section 101(a)(2) of the DSHMRA (30 U.S.C. 1411(a)(2)), and in NOAA regulations at 15 CFR 970.103(a)(2), except for any discharge from the initial mining tests.

Discharges will not be authorized from initial mining tests. "Initial mining test" means the taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication and testing of equipment which is intended to be used in the commercial recovery and processing of such resource. (See section 4(5)(B) of the DSHMRA (30 U.S.C. 1403(5)(B) and NOAA regulations at 15 CFR 970.101(i)(2).)

A NPDES permit for discharge from the initial mining tests will not be prepared at this time. These activities will be dealt with by EPA under the CWA when dealing with the NPDES permitting decision for the initial mining tests. There are three (3) reasons for this decision. First, after review of the applications for exploration licenses submitted to NOAA and after discussions with NOAA, it appears that any initial mining tests would occur between 1987 and 1990. This general NPDES permit is being issued in 1984 and will expire in 1989. Therefore, initial mining tests may not even occur during the term of this permit. Second, it is not clear how the initial mining tests would differ from tests described in the PEIS issued by NOAA in September 1981. The exact timing of NPDES permits for these activities is uncertain at this time, but EPA intends to prepare a general NPDES permit or individual NPDES permit(s) or modify the then existing general NPDES permit (as appropriate) for discharges from the initial mining tests when the details of the test plans

concerning these tests are submitted to NOAA as required by 15 CFR 970.204(a). Third, the PEIS and regulations issued by NOAA in September 1981, identified three (3) at-sea activities during exploration activities that have the potential for significant adverse environmental impact and are enumerated at 15 CFR 970.701(b)(2). In the PEIS, NOAA provided generic data evaluating the effect of surface and benthic discharges from mining system tests on the marine environment according to EPA's Ocean Discharge Criteria contained at 40 CFR 125.122. This generic data supplemented by site specific data, should facilitate any EPA decision which may be required under section 403 of the CWA (33 U.S.C. 1343) in dealing with the NPDES permitting decision for the initial mining tests. EPA encourages the consortia to develop and submit this information to NOAA as specified in the TGD in a timely manner because EPA may be basing its NPDES permitting decision for the initial mining tests in a large part on such information.

The general permit does not authorize discharge from a vessel or other floating craft subject to the DSHMRA engaged in commercial recovery under a permit issued by NOAA. EPA will work with NOAA to develop appropriate individual or general NPDES permits to deal with such discharges at the appropriate time. This general permit does not authorize discharge of manganese nodule processing wastes.

This general permit provides authorization of discharges from a vessel or other floating craft subject to the DSHMRA engaged in exploration activities under 15 CFR Part 970, including, but not limited to exploration activities enumerated in section 101(a)(2) of the DSHMRA (30 U.S.C. 1411(a)(2)), and in NOAA regulations at 15 CFR 970.103(a)(2), except for any discharge from the initial mining tests. EPA intends that these discharges are authorized when the vessel or other floating craft is actively engaged in exploration activities within the general permit area under the DSHMRA. EPA does not intend for this permit to cover discharges from a vessel or other floating craft when the vessel or other floating craft is traveling to or from the sites where exploration is conducted as EPA does not believe the vessel or other floating craft is engaged in exploration activities under the DSHMRA at those times.

The discharges which accompany exploratory operations are discussed below. The exploration activities for which discharge of pollutants are authorized by the permit fall into

categories which have been judged by NOAA to have no potential for significant environmental impact at 15 CFR 970.701(a). EPA had reviewed NOAA's determination and concurs with this judgment. EPA believes these ten (10) types of discharges are the only discharges that occur during exploration activities except for the initial mining tests. EPA invited comment on the appropriateness of nine (9) types of discharges for regulation, along with any types of discharges, including discharge from the samplers used by the consortia to convey sediment and nodule samples to the surface for collection, that may have been omitted. Due to a comment that it is possible there will be a discharge from sampling devices, EPA is also authorizing a discharge from sampling devices. Detailed comments on these issues and EPA's response is contained in the response to comments.

EPA Region 9 has characterized discharges 001-009 as "ancillary" type discharges which are typical of those which normally occur from a vessel or other floating craft. All nine (9) of these types of discharges contain no or de minimus amounts of process wastes, raw materials, toxic wastes, hazardous wastes or oil and grease. Discharges of these types are typically discharged overboard with the treatments as specified below, and have been determined by EPA to not cause either violation of marine water quality or unreasonable degradation of marine waters.

EPA Region 9 has included discharge 010, sampling device discharge, in this final permit. Any discharge which would occur from the sampling devices are typical of those which normally occur from oceanographic research samplers and would contain no or de minimus amounts of homogeneous raw materials obtained from the ocean environment. EPA has determined this discharge, as limited in this permit, will not cause either violation of marine water quality or unreasonable degradation of marine waters.

#### *Discharge #001—Deck Drainage*

Deck drainage includes all waste resulting from vessel washings, deck washings, tank cleaning operations, and run-off from curbs, gutters, and drains including drip pans and wash areas.

#### *Discharge #002—Sanitary Wastes*

Sanitary wastes include human body waste discharged from toilets and urinals. These wastes are treated prior to discharge.

#### *Discharge #003—Domestic Wastes*

Domestic wastes (also referred to as "kitchen and shower discharge" or "grey water") includes materials discharged from galleys, sinks, showers, and laundries. These are normally released directly overboard without treatment, or with minimal grinding to assure that no floating solids are present, because soaps and detergents interfere with the operation of the oil/water separator and adversely affect bacterial sewage treatment systems.

#### *Discharge #004—Water Distillation Discharge*

Water distillation discharge means wastewater associated with the process of creating fresh water from seawater. Seawater is processed through one (1) of several different types of distillation units to obtain potable water. In the desalinization process, the normal constituents of seawater are concentrated to about twice their normal concentration. No additional chemicals are added during the distillation operation and the waste is discharged without treatment.

#### *Discharge #005—Boiler Blowdown*

Boiler blowdown means the discharge of recirculating water from boilers to remove ionic concentrations contained in the water, preventing the further buildup of concentrations exceeding limits established by best engineering practice. This discharge is released directly overboard without treatment.

#### *Discharge #006—Fire Control System Test Water*

Fire control system test water is seawater discharged during periodic testing of the fire control system. This discharge is released during the training and testing of personnel in fire protection.

#### *Discharge #007—Cooling Water*

Cooling water means once through non-contact cooling water. Non-contact cooling water is seawater used to cool electricity generating equipment. The temperature of seawater is increased a maximum of 3 °C (5 °F) over ambient and no chemical treatment is required. This discharge is released directly overboard without treatment.

#### *Discharge #008—Uncontaminated Ballast Water*

Ballast water means water used by the vessel or other floating craft for stability. Seawater is introduced into or removed from ballast water to maintain the proper ballast floater level and ship draft during operations. No chemicals

are introduced and ballast water is discharged without treatment.

#### *Discharge #009—Uncontaminated Bilge Water*

Bilge water means water that accumulates in the bilge of the vessel or other floating craft. Bilge water is discharged without treatment.

#### *Discharge #010—Sampling Device Discharge*

Sampling device means any sampling device, including, but not limited to box cores, dredges and baskets, used to obtain samples of and/or from the deep seabed. Under proper operation and maintenance, any discharge from the sampling device during the conveyance of the sampling device to the surface for retrieval, will contain no or de minimus amounts of homogeneous raw materials obtained from the ocean environment.

The exploration activities covered by section 4(5) of the DSHMRA (30 U.S.C. 1403(5)) and NOAA regulations at 15 CFR 970.101(i)(1) may include grab sample and surveying activities at the ocean floor.

Before issuing the proposed permit, EPA reviewed the licenses applications submitted by the consortia to NOAA and did not believe there would be any discharge from the various samplers to be used in conveying the sediment and nodule samples to the surface for collection. For this reason, EPA neither listed this as a possible discharge nor developed technology-based effluent limitations for such a discharge in the proposed permit. EPA solicited comment on the issue whether there would be discharges from the various samplers, and if so, appropriate technology-based effluent limitations for such discharges and stated that if comments indicated there would be a discharge from the various samplers, EPA would develop effluent limitations to control these discharges, and evaluate the effect of these limitations on marine water quality criteria and Ocean Discharge Criteria, in the final permit.

A commenter indicated there could be a discharge of nodule fragments and bottom sediments into the water column from various sampling devices as a sample was being brought to the surface for retrieval. EPA has contacted the Ocean Minerals and Energy Division of NOAA, who informed us that if the sampling devices are well operated and maintained, that there is little or no leakage or washing action of sediments and/or nodules to the water column when the samplers are being brought to the surface. However, there is a potential for discharge of sediments

and/or nodules to the water column if the sampling devices are not properly operated and maintained. Due to the fact that there may in fact be such a discharge, EPA is authorizing discharge from sampling devices in the final permit and has designated this as discharge 010. A definition of sampling device has been provided in Part III.D.28 of the permit. The limitations and conditions imposed on this discharge are discussed later in this notice.

In obtaining the grab samples and in conducting surveying activities at the ocean floor, there may be disturbances of sediments at the ocean floor, which EPA does not believe to be discharges from point sources subject to the CWA.

### III. Conditions in the Final General NPDES Permit

#### A. Geographic Area of the Final General NPDES Permit

The final general NPDES permit issued today is applicable to discharges from a vessel or other floating craft subject to the DSHMRA engaged in exploration activities under 15 CFR Part 970, including, but not limited to exploration activities enumerated in Section 101(a)(2) of the DSHMRA (30 U.S.C. 1411(a)(2)) and in NOAA regulations at 15 CFR 970.103(a)(2), except for any discharge from the initial mining tests. The authorized discharge sites include all the area of the Pacific Ocean between 110 degrees West and 180 degrees West longitude and 5 degrees North and 20 degrees North latitude that lies within the definition of the deep seabed as defined in section 4(4) of the DSHMRA (30 U.S.C. 1403(4)) and in NOAA regulations at 15 CFR 970.101(h), including, but not limited to, the Northeastern Equatorial Pacific Ocean within the seabed generally known as the Clarion-Clipperton Fracture Zone. The authorized discharge sites specifically excludes all areas which lie within the territorial seas of the State of Hawaii.

The permittee shall be the U.S. citizen, as defined in section 4(14) of the DSHMRA (30 U.S.C. 1403(14)) and in NOAA regulations at 15 CFR 970.101(t), engaged in exploration activities as enumerated in this permit.

Section 3(a) of the DSHMRA (30 U.S.C. 1402(a)) contains a specific disclaimer of extraterritorial sovereignty. EPA in no way intends to exert jurisdiction over any activity other than the discharge from any vessel or other floating craft subject to the DSHMRA. This permit only regulates U.S. citizens engaged in exploration activities under NOAA regulations contained in 15 CFR Part 970, including, but not limited to exploration activities

enumerated in section 101(a)(2) of the DSHMRA (30 U.S.C. 1411(a)(2)), and in NOAA regulations at 15 CFR 970.103(a)(2), except for any discharge from the initial mining tests, as enumerated in this permit. The nations of Mexico (Islas de Revillagigedo), France (Clipperton Island) and Kiribati (Washington and Fanning Islands) have territory in or near the Pacific Ocean area encompassed between 110 degrees West and 180 degrees West longitude and 5 degrees North latitude. A portion of the State of Hawaii is also located within these same coordinates, as are Johnston Atoll, Kingman Reef and Palmyra Atoll. Accordingly, EPA has limited the area covered by the general permit to those areas (1) within the above enumerated coordinates and (2) within the deep seabed as defined by section 4(4) of the DSHMRA (30 U.S.C. 1403(4)) and NOAA regulations at 15 CFR 970.101(h). "Deep seabed" is defined by the DSHMRA and NOAA regulations as

The seabed, and the subsoil thereof to a depth of ten (10) meters, lying seaward of the outside—(1) the Continental Shelf of any nation; and (2) any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States.

The definition excludes authorization of discharge to any area that does not lay seaward of and outside—(1) the Continental Shelf of any nation; and (2) any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States.

In addition, this final general NPDES permit specifically excludes the territorial seas of the State of Hawaii from the area in which discharges are authorized. This is consistent with the definition of the Continental Shelf contained in section 4(2) of the DSHMRA (30 U.S.C. 1403(2)) and in NOAA regulations at 15 CFR 970.101(f), which excludes the territorial seas. The State of Hawaii issues NPDES permits, through the Hawaii Department of Health, to discharges within the State of Hawaii, which includes the territorial seas.

#### B. Application of the General Permit Program

EPA has determined that discharges from a vessel or other floating craft engaged in exploration activities under the DSHMRA operating within the areas described in this final permit are more appropriately controlled by a general NPDES permit than by individual

permits. In accordance with 40 CFR 122.28(a)(2)(ii), these facilities involve the same or substantially similar types of operations, discharge the same types of wastes, require the same effluent limitations or operating conditions, require the same monitoring requirements, and in the opinion of the Regional Administrator, are more appropriately controlled under a general NPDES permit than under individual permits. The regulations at 40 CFR 122.28(a)(1) require the general permit to cover a category of dischargers within a geographical area. This general permit covers the entire area covered by the NOAA PEIS issued in September 1981, which encompasses those portions of the Pacific Ocean, that lie within the definition of deep seabed, between 110 degrees West and 180 degrees West longitude and 5 degrees North and 20 degrees North latitude, as "[a]ny other appropriate division or combination of boundaries." 40 CFR 122.28(a)(1)(vii). Additionally, as discussed earlier, the provisions for general permits allow EPA to address the cumulative effects of multiple facilities operating in one (1) geographic area, and provide a better mechanism to impose an area wide monitoring program that may more effectively assess potential environmental degradation. The ability of general permits to address area wide concerns may become particularly important in permitting initial mining tests and commercial recovery phases of deep seabed mining activities.

Vessels authorized to discharge in accordance with this permit will remain at any one (1) location for a limited period of time in conducting exploratory activities. The general permit allows these facilities the flexibility to move within the permitted area without applying for and obtaining a new permit. Due to EPA's definition of "new discharger" in 40 CFR 122.2 which includes existing mobile point sources which move to a new location, most, if not all facilities covered by this general permit will be new dischargers. The effluent limitations and conditions for discharges 001-009 contained in the general permit are standard limitations provided for ancillary discharges from mobile point sources in Region 9. The effluent limitations and conditions for discharge 010 contained in the general permit requires the proper operation and maintenance of the sampling devices. EPA regulations, as applied to new dischargers, do not allow for a compliance schedule (40 CFR 122.47(a)(2)) and require compliance within ninety (90) days (40 CFR 122.29(d)(4)). Therefore, the general

permit is the best regulatory mechanism available to EPA to impose uniform effluent limitations and conditions upon all facilities entering the permit area.

The Regional Administrator has concluded that discharges authorized under the effluent limitations and conditions of this permit will not cause unreasonable degradation of the marine environment (See Section H. Ocean Discharge Criteria). This determination is based on a review of all the material available for a determination of all issues related to this general permit. The only discharges that will be authorized by this general permit are ancillary discharges or de minimus discharges from sampling devices which, subject to the technology-based effluent limitations and conditions, will not cause unreasonable degradation to the marine environment. Possible concerns regarding the effects and impacts of discharges from the initial mining tests will be dealt with at the appropriate time.

Under section 403 of the CWA (33 U.S.C. 1343), this permit contains a reopener clause (authorized by 40 CFR 125.123(d)(4)) which requires the Regional Administrator to modify or revoke this general permit if new data indicates that continued discharges may cause unreasonable degradation of the marine environment. Permit modification or revocation will be conducted in accordance with 40 CFR 122.62, 122.64 and 124.5 pursuant to Part III.B.5 of the general permit.

The documents particularly applicable to this permit decision include:

- (1) NOAA, Final Programmatic Environmental Impact Statement, Deep Seabed Mining, September 1981.
- (2) NOAA, Final Technical Guidance Document, Deep Seabed Mining, September 1981.
- (3) NOAA—Final Rules, Deep Seabed Mining Regulations for Exploration Licenses, 15 CFR Part 970, as amended.
- (4) Various License Applications by Four Consortia, 1982.
- (5) NOAA, Deep Seabed Mining, Draft Environmental Impact Statements on Issuing Exploration Licenses to the Four Consortia, May, 1984.
- (6) NOAA, Deep Seabed Mining, Final Environmental Impact Statements on Issuing Exploration Licenses to the Four Consortia, July 1984.

#### C. Covered Facilities

This general permit authorizes discharges from existing sources and "new dischargers" (40 CFR 122.2) from vessels or other floating craft subject to the DSHMRA engaged in exploration activities under 15 CFR Part 970, including, but not limited to exploration

activities enumerated in section 101(a)(2) of the DSHMRA (30 U.S.C. 1411(a)(2)) and in NOAA regulations at 15 CFR 970.103(a)(2), except for any discharge from the initial mining tests. EPA has not promulgated new source performance standards (NSPS) for this activity pursuant to Section 306 of the CWA (33 U.S.C. 1316). If NSPS are ever promulgated, EPA may have an obligation under section 511(c)(1) of the CWA (33 U.S.C. 1371(c)(1)) and the National Environmental Policy Act (NEPA) (33 U.S.C. 4321, *et seq.*) to do an environmental assessment for all general NPDES permits (covering new sources).

This general permit does not authorize discharge from the initial mining tests. This general permit does not authorize discharge from a vessel or other floating craft subject to the DSHMRA engaged in commercial recovery under a permit issued by NOAA. This general permit does not authorize discharge of manganese nodule processing wastes. Separate NPDES permits must be obtained from the appropriate permitting authority for all these discharges, unless general NPDES permits have been issued to cover these activities.

#### D. Notification by Permittees

Individual permit applications are not required to be submitted by permittees entering the general permit area. However, Parts I.A.—I.B. of the general permit requires each permittee operating in the general permit area to notify the Regional Administrator of Region 9 in writing of the commencement and termination of discharges from each facility. This written notification must be made at least fourteen (14) days prior to the commencement of discharges and include the permittee's name and address, a description of the exploration activities and accompanying discharges and the general area in which the exploration will take place. The marine call letters assigned to the exploration vessel must also be furnished to provide EPA a means of locating the vessel at any time. Failure to provide this written notification means that the facility is not authorized to discharge under this general permit. Changes in the geographic area of exploration which become necessary during the course of exploration must be reported in the annual monitoring report submitted pursuant to Part II.C.4 of the permit. The permittee shall also notify the Regional Administrator upon permanent termination of operations.

#### E. Expiration and Termination Dates

Section 301(b)(1) of the CWA (33 U.S.C. 1311(b)(1)) requires the application of effluent limitations representing best practicable control technology currently available (BPT) by July 1, 1977. Section 301(b)(2) of the CWA (33 U.S.C. 1311(b)(2)) requires that all permits effective or issued after July 1, 1984, contain effluent limitations representing best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) for all categories and classes of point sources. This permit contains technology-based effluent limitations found by the Regional Administrator to be BAT and/or BCT (BAT/BCT). This permit also contains best management practices (BMPs) authorized by section 304(e) of the CWA (33 U.S.C. 1314(e)) found by the Regional Administrator to control spillage and/or leaks from the sampling devices. (See F. Technology-Based Effluent Limitations.) The general permit has an expiration date of October 5, 1989.

#### F. Technology-Based Effluent Limitations

The CWA requires all dischargers to meet effluent limitations based on the technological capacity of discharges to control the discharge of their pollutants. EPA has promulgated neither effluent limitations guidelines regulations under section 304(b) or the CWA (33 U.S.C. 1314(b)) nor best management practices under section 304(e) of the CWA (33 U.S.C. 1314(e)) for discharges from deep seabed mining exploration activities. Therefore, the technology-based effluent limitations applicable to these discharges, including the BMPs for discharge 010, have been developed for this permit using best professional judgment (BPJ) as authorized by section 402(a)(1) of the CWA (33 U.S.C. 1342(a)(1)) and EPA regulations at 40 CFR 125.3. As proposed on August 29, 1983, this permit included BPT effluent limitations because EPA believed the permit would be issued before June 30, 1984. Due to the fact the final permit was not issued until today, BPT effluent limitations are not included in the final permit. However, BAT/BCT effluent limitations, developed on a BPJ basis, are included in this permit.

The general permit has an expiration date after June 30, 1984, which requires the permit to contain effluent limitations to meet BAT and/or BCT. EPA reviewed the statutory requirements for BAT and BCT contained in the CWA and is not aware of any other treatment

technologies available for these ancillary discharges that will result in more stringent effluent limitations than those for BPT. The only viable more stringent treatment technology would involve a no discharge requirement which cannot be justified for such facilities due to the mobile nature and extreme distance from shore of these facilities, along with the cost of imposing such a requirement on these facilities. Therefore, using best professional judgment, EPA finds that any and all requirements necessary to meet BAT and/or BCT effluent limitations for the ancillary discharges in this general permit are equal to those for BPT. EPA invited comment as to the appropriateness of this decision in the proposal and received no comments on this issue.

The BAT/BCT effluent limitations for deck drainage, sanitary wastes and domestic wastes (outfalls 001, 002 and 003, respectively) in the general permit are based upon BPT effluent limitations guidelines regulations promulgated on April 13, 1979, for the Offshore Subcategory of the Oil and Gas Point Source Category (40 CFR Part 435, Subpart A). The limitations are identical to those imposed by Region 9 on ancillary discharges from exploratory drilling operations for oil and gas operations on the Outer Continental Shelf off Southern California in a final general BPT NPDES permit (Southern California OCS General Permit) issued in 1982 and modified and reissued in 1983. 47 FR 7312 (February 18, 1982) and 48 FR 55029 and 55031 (December 8, 1983). The BAT/BCT limitation for deck drainage specifies "no discharge of free oil." The BAT/BCT limitation for sanitary wastes requires that the concentration of chlorine be maintained as close to 1.0 mg/l as possible from facilities housing ten (10) or more persons. For those facilities that are intermittently manned or for facilities permanently manned by nine (9) or fewer persons, the BAT/BCT limitation for sanitary wastes is "no floating solids as a result of the discharge of these wastes." Additionally, this general NPDES permit provides that any facility using an approved marine sanitation device that complies with section 312 of the CWA (33 U.S.C. 1322) and EPA regulations at 40 CFR Part 140 shall be in compliance with requirements for sanitary waste discharges in the final permit. The BAT/BCT limitation for domestic wastes is "no floating solids as a result of the discharge of these wastes." The monitoring requirements for deck drainage, sanitary wastes and domestic wastes are very similar to the

monitoring requirements for these discharges from offshore oil drilling operations in Region 9. EPA has reduced the monitoring requirements, from those proposed, for deck drainage in response to public comments. Compliance with the effluent limitation for deck drainage ("no discharge of free oil") is determined through the "laboratory sheen test". The permittee shall make visual observations for the presence of free oil in the discharge using the laboratory sheen test. The final permit requires that a representative sample of deck drainage be sampled once every two (2) months, or once per voyage if the voyage is shorter than two (2) months, and analyzed for oil using the laboratory sheen test. The laboratory sheen test means those procedures which involve diluting one (1) part whole effluent, collected just prior to discharge, with nine (9) parts ambient seawater. This mixture shall be maintained as close as possible to ambient seawater temperature while being stirred mechanically with a magnetic stirrer for fifteen (15) minutes, after which time the permittee shall make a visual observation for the presence of free oil (sheen) on the surface. This protocol is in part derived from the Environmental Protection Technology Series EPA-R2-72-039, "The Appearance and Visibility of Thin Oil Films on Water". The *Development Document for Interim Final Effluent Limitations Guidelines and Proposed New Source Performance Standards for the Oil and Gas Extraction Point Source Category*, September, 1976 (Development Document) discussed BPT technology to obtain compliance with limitations for deck drainage, sanitary and domestic wastes. The same BAT/BCT limitations are imposed here since the nature of the discharges and the impact on the receiving waters are similar. Compliance with the limitations is attainable as these operations and the technology to obtain compliance are the same or similar to those used in offshore drilling operations.

The BAT/BCT limitations for miscellaneous discharges [water distillation discharge (outfall 004), boiler blowdown (outfall 005), fire control system test water (outfall 006), cooling water (outfall 007), uncontaminated ballast water (outfall 008) and uncontaminated bilge water (outfall 009)] are identical to those imposed by Region 9 in the Southern California OCS General Permit for similar miscellaneous discharges, i.e., "no discharge of free oil." The same limitations are imposed here since the nature of the discharges and the impact on the receiving waters

are similar. Compliance with the limitations is attainable as these operations and the technology to obtain compliance are the same or similar to those used in offshore drilling operations. EPA has changed the monitoring requirements for these miscellaneous discharges in response to public comments that there is little or no potential for contamination of these discharges.

The permittee still must comply with the effluent limitations of no discharge of free oil for these discharges; compliance is determined using the visible sheen test as defined in Part III.D.21 of this permit.

Earlier in this notice, EPA discussed the addition of discharge 010, which authorizes a discharge from sampling devices. EPA has determined that proper operation and maintenance of the sampling devices will result in no or de minimus quantities of sample, which consists of homogeneous raw materials obtained from the ocean floor (sediments and/or nodules), to be discharged by leakage or washing from the sampling device to the ocean environment when the sampler is being retrieved from the ocean floor. EPA has also determined that if the sampling devices are not properly operated and maintained, there is a potential for discharge of sediments and/or nodules to the water column by spillage and/or leakage upon retrieval of the samplers. EPA believes the most appropriate manner in which to control such discharges, and to prevent spillage and/or leakage of quantities of materials for the sampling devices, is through a best management practice which requires the sampling device to be properly operated and maintained. The proper operation and maintenance of the sampling devices is attainable and within the technological capabilities of the dischargers. EPA believes that, in fact, the proper operation and maintenance of the sampling devices will be done as a matter of course due to the exploratory and scientific nature of the activities to be undertaken by the consortia. This condition is contained in Part II.3.b of the permit. EPA has also established a monitoring and reporting requirement (in Part II.3.c of the permit) that requires the permittee to estimate the quantity of material discharged from the sampling devices each month; the estimated quantity is to be reported in the yearly discharge monitoring report.

No effluent limitations for other pollutants have been established in this general permit as they are normally reduced incidentally with the removal or reduction of another pollutant

parameter, or do not represent a threat to marine water quality.

#### G. Other Discharge Limitations and Permit Conditions

In addition to the technology-based effluent limitations contained in the general permit, the following limitations and conditions are also imposed:

(1) There shall be no discharge of floating solids or visible foam in other than trace amounts;

(2) There shall be no discharge of toxic materials which, after allowance for initial mixing as provided by the Ocean Discharge Criteria (40 CFR Part 125, Subpart M), exceed applicable marine water quality criteria (45 FR 79318, November 28, 1980); and

(3) The permittee is required to minimize the discharge of dispersants, surfactants, and detergents except as necessary to comply with the safety requirements of the Occupational Safety and Health Administration and the U.S. Coast Guard. This restriction applies to tank cleaning and other operations which do not directly involve the safety of workers. The restriction is imposed because these chemicals: (1) Disperse and emulsify oil thereby enhancing its toxicity, (2) reduce the effectiveness of the oil/water separator, and (3) make the detection of an oil discharge more difficult.

The final general NPDES permit also contains requirements regarding monitoring and records (Part I.I.C), reporting requirements (Part I.I.D), operation and maintenance of pollution controls (Part III.A), general conditions (Part III.B) and additional general permit conditions (Part III.C). These requirements contain conditions imposed by the CWA and/or EPA regulations. The permit conditions, as specified, reflect requirements as they currently exist. Commenters expressed concern about certain of these requirements. The specific comments and EPA's response is contained in the response to comments contained in Appendix A.

EPA has developed this general NPDES permit and notice in cooperation with NOAA. NOAA had expressed concern with regard to certain conditions of the draft general NPDES permit, especially conditions regarding inspection and entry and reporting requirements. The proposed and final permit provides that the permittee shall allow EPA entry and inspection of facilities regulated by the permit. One commenter also expressed concern about EPA's right of entry to foreign flag vessels. As discussed further in Appendix A, Part II.C.9 of the final permit provides EPA right of entry; this

provision was derived from Section 308 of the CWA (33 U.S.C. 1318) and NPDES regulations at 40 CFR 122.41(i). EPA will coordinate with the consortia and NOAA regarding any requirements for inspection and entry of the vessel or other floating craft. EPA believes that present communications systems will allow the permittees to comply, in a timely manner, with any reporting requirements contained in the final permit.

#### H. Ocean Discharge Criteria

Section 403 of the CWA (33 U.S.C. 1343) requires that a NPDES permit for discharges into ocean waters be issued in compliance with EPA's guidelines for determining the degradation of marine waters. The Ocean Discharge Criteria, which are contained at 40 CFR Part 125, Subpart M, set forth specific criteria for a determination of unreasonable degradation that must be addressed prior to the issuance of a NPDES permit. If sufficient information is unavailable on the proposed discharge or on its potential effects to make a reasonable judgment the Director (in this case the Regional Administrator) may require the applicant to submit additional information. If EPA determines that there will be no unreasonable degradation, the permit may be issued. If a determination of unreasonable degradation cannot be made, the Regional Administrator must then determine whether a discharge will cause irreparable harm of the marine environment. In assessing the probability of irreparable harm, the Regional Administrator is required to make a reasonable determination that the discharger operating under a permit with monitoring requirements and effluent limitations in place, will not cause permanent and significant harm to the environment. If further data gathered through monitoring indicates that the continued discharge of a pollutant will produce unreasonable degradation, the discharge must be halted or additional permit limitations established.

EPA regulations at 40 CFR 125.122 identify ten (10) factors which are to be considered in making the determination of unreasonable degradation. These factors include: (1) the quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged; (2) the potential transport of such pollutants by biological, physical or chemical processes; (3) the composition and vulnerability of the biological communities which may be exposed to such pollutants including the presence of unique species or communities, or the presence of species identified as

endangered or threatened pursuant to the Endangered Species Act, or the presence of those species critical to the structure and function of the ecosystem such as those important for the food chain; (4) the importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways or areas necessary for other functions or critical stages in the life cycle of an organism; (5) the existence of special aquatic sites including but not limited to marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs; (6) the potential impacts on human health through direct and indirect pathways; (7) existing or potential recreational and commercial fishing, including finfishing and shellfishing; (8) any applicable requirements of an approved Coastal Zone Management Plan; (9) such other factors relating to the effects of the discharge as may be appropriate; and (10) marine water quality criteria developed pursuant to section 304(a)(1) of the CWA (33 U.S.C. 1314(a)(1)).

The ancillary discharges from discharges 001-009 that are limited by this general NPDES permit are typical discharges from a vessel or other floating craft which are usually not subject to permitting requirements as a "discharge of a pollutant" under section 502(12) of the CWA (33 U.S.C. 1362(12)). Discharge 010 authorizes discharges of de minimus quantities of materials from sampling devices, when the samplers are being properly operated and maintained, upon retrieval of the sampling devices from the ocean floor. Section 109(e) of the DSHMRA (30 U.S.C. 1419(e)) requires that these discharges, in addition to the potentially more significant mining discharges, be subject to the CWA. The final permit contains technology-based effluent limitations and conditions on these discharges.

The Regional Administrator has concluded that discharges from a vessel or other floating craft engaged in deep seabed mining exploration activities, including, but not limited to exploration activities enumerated in section 101(a)(2) of the DSHMRA (30 U.S.C. 1411(a)(2)) and in NOAA regulations at 15 CFR 970.103(a)(2), excluding discharges from the initial mining tests which are not covered by this permitting action, operating under the effluent limitations and conditions of this permit will not cause unreasonable degradation of the marine environment. One commenter expressed concern regarding

this determination; the specific comments and EPA's response are contained in Appendix A. The limitations for discharges 001-009 are identical to those imposed by Region 9 on the same ancillary discharges for exploratory drilling operations in the Southern California OCS General Permit issued in 1982 and modified and reissued in 1983. The determinations made pursuant to section 403(c) of the CWA (33 U.S.C. 1343(c)) with regard to Ocean Discharge Criteria in the Southern California OCS General Permit determined that all discharges, including these ancillary discharges, would not cause unreasonable degradation. Proper operation and maintenance of sampling devices should prevent or minimize discharge of any materials from the sampling devices upon retrieval from the ocean floor. The only discharges authorized by this general permit are ancillary discharges and de minimus discharges from sampling devices which, subject to the technology based effluent limitations and conditions, will not cause unreasonable degradation to the marine environment. Possible concerns regarding the effects and impacts of discharges from the initial mining tests will be subjected to rigorous determinations under the Ocean Discharge Criteria by EPA at the appropriate time.

Factor 1 addresses the quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged. The pollutants from discharges 001-009 that will be discharged under the limitations and conditions of this general permit will consist of minor quantities of oil and grease, non-floating solids from domestic wastes, concentrated constituents of seawater from water distillation units and minimal boiler blowdown. Any discharge from sampling devices that will be discharged under the limitations and conditions of this general permit will consist of de minimus quantities of homogeneous raw materials obtained from the ocean floor (sediments and/or nodules). Discharges of these pollutants, under the conditions of the permit, have no potential for bioaccumulation or persistence.

Factor 2 addresses the potential transport of such pollutants by biological, physical or chemical processes. Any potential for transport of the pollutants discharged under the limitations and conditions of this general permit causes a continued reduction in toxicity.

Factor 3 addresses the composition and vulnerability of the biological communities which may be exposed to

such pollutants including the presence of unique species of communities, or the presence of species identified as endangered or threatened pursuant to the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (ESA), or the presence of those species critical to the structure and function of the ecosystem such as those important for the food chain. In 1981 and 1982, the U.S. Fish & Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), NOAA respectively, presented biological opinions to the Office of Ocean Minerals and Energy (OME), NOAA regarding the effects on threatened or endangered species or their designated critical habitat of proposed deep seabed mining regulations for exploration licenses and the applications submitted by the consortia for exploration licenses. Copies of all opinions are contained in the administrative record for this permit. These actions were initiated pursuant to section 7 of the ESA (16 U.S.C. 1536). These biological opinions identify six (6) species of whales and four (4) species of turtles found within or near the general permit area which are Federally listed endangered or threatened species, and could potentially be affected by the discharge activities to be authorized by this permit. Following is a listing of the identified species:

Humpback whale, *Megaptera novaeangliae*,  
Blue whale, *Balaenoptera musculus*,  
Sperm whale, *Physeter catodon*,  
Sei whale, *Balaenoptera borealis*,  
Fin whale, *Balaenoptera physalus*,  
Right whale, *Eubalaena spp.*,  
Green sea turtle, *Chelonia mydas*,  
Hawksbill sea turtle, *Eretmochelys imbricata*,  
Loggerhead sea turtle, *Caretta caretta*,  
Leatherback sea turtle, *Dermochelys coriacea*.

The opinions presented by the USFWS and NMFS, NOAA generally concluded that exploration activities would not jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. As indicated above, these opinions covered even more activities than are covered in this general permit, which only deals with ancillary discharges which are typical of those from a vessel or other floating craft and de minimus quantities of materials from sampling devices. EPA has reviewed the conclusions on NOAA and believes that discharges under the effluent limitations and conditions in this permit are consistent with the ESA.

In addition, EPA provided a copy of the draft general permit and notice to both the USFWS and NMFS, NOAA advising them of the draft general permit

and requested an evaluation of EPA's conclusion that the proposed permit would not affect threatened or endangered species. The USFWS responded that NMFS, NOAA had jurisdiction of all species of concern. NMFS, NOAA agreed with the conclusions of EPA. The responses of each agency are included in the administrative record and their opinions were fully considered.

Factor 4 addresses the importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways or areas necessary for other functions or critical stages in the life cycle of an organism. This factor is intended to ensure that potential impacts on spawning sites, nursery/forage areas, migratory pathways, or other critical functions are evaluated. The previous discussion on factor 3 dealing with the ESA revealed that both the NMFS, NOAA and USFWS concluded that these exploratory activities would not jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Due to the fact that the general permit will only deal with ancillary discharges and de minimus discharges from sampling devices which are limited by effluent limitations and conditions, EPA expects no unreasonable degradation to non-resident species or critical habitats.

Factor 5 addresses the existence of special aquatic sites including, but not limited to, marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs. In the PEIS, NOAA stated that there are no such sites in the area to be encompassed by this general permit. However, on January 13, 1984, NOAA proposed designation of the Hawaii Humpback Whale National Marine Sanctuary (49 FR 1788) which, in the area near the permitted area, applies to those waters found within the 100 fathom isobath around the Island of Hawaii. (Other notices appear at 49 FR 3523 (Jan. 27, 1984) and 49 FR 4030 (Feb. 1, 1984).) This general permit only authorizes discharges in the area of the Pacific Ocean between 110 degrees West and 180 degrees West longitude and 5 degrees North and 20 degrees North latitude that lies within the definition of the deep seabed as defined in section 4(4) of the DSHMRS (30 U.S.C. 1403(4)) and in NOAA regulations at 15 CFR 970.101(h). The deep seabed excludes any area that lies within the Continental Shelf, which includes areas to a depth of

200 meters. Therefore, any exploration activities authorized by the DSHMRA, and discharges authorized by this permit, would occur in those areas of the Pacific Ocean outside of a depth of 200 meters, which is deeper than 100 fathoms. Therefore, no discharges would occur within the proposed Hawaii Humpback Whale National Marine Sanctuary. In addition, due to the nature of the discharges to be authorized by this permit (which are ancillary discharges which are typical of those from a vessel or other floating craft and de minimus discharges from sampling devices), EPA believes there are no activities to be authorized by this permit which would be prohibited or regulated by the eventual designation of the Hawaii Humpback Whale National Marine Sanctuary. Due to these facts, there will not be unreasonable degradation of the marine environment due to factor 5 of the Ocean Discharge Criteria.

Factor 6 addresses the potential impacts on human health through direct and indirect pathways. Due to the fact this general permit only deals with ancillary discharges that are subject to the effluent limitations and conditions and are typical of those from a vessel or other floating craft and de minimus discharges or raw materials from sampling devices back onto the ocean environment, EPA does not expect any potential impacts on human health through direct or indirect pathways.

Factor 7 addresses existing or potential recreational and commercial fishing, including finfishing and shellfishing. The PEIS stated that five (5) United States and Japanese tuna and billfish industries were conducted in the area encompassed by this general permit and that the activities would not be affected by mining tests. EPA has reviewed this conclusion and believes that since this general permit only deals with ancillary discharges which are typical of those from a vessel or other floating craft and de minimus discharges of raw materials from sampling devices back into the ocean environment, EPA does not expect any impact by the discharges, as limited in the permit, on existing or potential recreational and commercial fishing, including finfishing and shellfishing.

Factor 8 addresses any applicable requirements of an approved Coastal Zone Management Plan (CZMP). In the PEIS, NOAA determined that the discharges in the area to be authorized under this general permit will not directly impact the coastal areas of any State. For the draft permit, EPA had reviewed this determination and

concurred with NOAA's findings with regard to direct impact and had determined there would be no potential impact on the CZMP of the State of Hawaii, the only State within the vicinity of the permitted area. This finding was based on representations by NOAA that any exploration activity for which discharges will be authorized by this permit will occur a considerable distance from the State of Hawaii, including the territorial seas. Therefore, due to this fact, there would not be any unreasonable degradation of the marine environment due to factor 8 of the Ocean Discharge Criteria.

However, EPA was advised that a consistency determination under section 307(c)(3)(A) Subpart D of the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*) (CZMA) (16 U.S.C. 1456(c)(3)(A) Subpart D) was required. EPA submitted a written statement of consistency with the Hawaii Coastal Zone Management Program (CZMP) to the Hawaii Department of Planning and Economic Development (Hawaii DPED), which is the approved State agency for CZMP in Hawaii. On August 30, 1984, the Hawaii DPED responded with a statement of concurrence with EPA's consistency certification. However, the concurrence was conditioned upon the Hawaii DPED being informed of anticipated or unanticipated bypasses. As such, a condition (Part I.E) was added to the final general permit which requires that dischargers notify the Hawaii DPED of anticipated or unanticipated bypasses of treatment facilities.

Factor 9 addresses such other factors relating to the effects of the discharge as may be appropriate. Due to the fact that this general permit contains effluent limitations and conditions on the ancillary discharges that are typical of those from a vessel or other floating craft and de minimus discharges of raw materials from sampling devices back into the ocean environment, EPA has determined that there are no other factors relating to the effects of these discharges that are appropriate.

Factor 10 addresses marine water quality criteria developed pursuant to section 304(a)(1) of the CWA (33 U.S.C. 1343(a)(1)). Factor 10 requires that EPA identify conventional, non-conventional and toxic pollutants in the discharge to be permitted and establish that numeric units in applicable marine water quality criteria will be met with permit limitations in place. All dischargers that comply with the effluent limitations and conditions in Part I.B.2. of this general permit will comply with all applicable marine water quality criteria developed pursuant to section 304(a)(1) of the CWA (33 U.S.C. 1343(a)(1)).

### I. Oil Spill Requirements

Section 311 of the CWA (33 U.S.C. 1321) prohibits the discharge of oil and hazardous materials in harmful quantities. In the 1978 amendments of section 311 of the CWA (33 U.S.C. 1321), Congress clarified the relationship between this section and discharges permitted under section 402 of the CWA (33 U.S.C. 1342). It was the intent of Congress that routine discharges permitted under section 402 of the CWA (33 U.S.C. 1342) be excluded from section 311 of the CWA (33 U.S.C. 1321). Discharges permitted under section 402 of the CWA (33 U.S.C. 1342) are not subject to section 311 of the CWA (33 U.S.C. 1321) if they are:

1. In compliance with a permit under section 402 of the CWA (33 U.S.C. 1342);
2. Resulting from circumstances identified, reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the CWA (33 U.S.C. 1342), and subject to a condition in such permit; or
3. Continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA (33 U.S.C. 1342), which are caused by events occurring within the scope of the relevant operating or treatment systems.

To help clarify the relationship between discharges permitted under section 402 of the CWA (33 U.S.C. 1342) and section 311 of the CWA (33 U.S.C. 1321) discharges, EPA has compiled the following list of discharges which it considers to be regulated under section 311 of the CWA (33 U.S.C. 1321) rather than under a section 402 (33 U.S.C. 1342) permit. The list is not to be considered all-inclusive.

1. Discharges of contaminated ballast water or contaminated bilge water,
2. Discharges from burst or ruptured pipelines, manifolds, pressure valves or atmospheric tanks,
3. Discharges from pumps or engines,
4. Discharges from vessel launching and receiving equipment, and
5. Spills of diesel fuel during transfer operations.

In addition, one commenter indicated there is a potential for disposal of petroleum products in the domestic waste system. EPA believes such a discharge would be subject to section 311 of the CWA (33 U.S.C. 1321); therefore, EPA has not imposed limitations in this NPDES permit on the domestic waste system to prevent such a discharge.

#### J. Effective Date

In the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA), 5 USC 553(d) requires publication of a substantive rule not less than 30 days before its effective date. However, 5 U.S.C. 553(d)(3) provides an exception to this requirement for good cause found and published with the rule. EPA finds good cause to make this final general permit effective upon publication. This general permit authorizes discharges from deep seabed mining exploration vessels; discharge without this permit is a violation of the CWA. On August 29, 1984, NOAA issued exploration licenses to three consortia, allowing further exploration. To delay the effective date of this general permit could result in discharges in violation of the CWA. Therefore, EPA finds good cause to make this general permit effective immediately. (The requirements for effective dates of NPDES permits found in 40 CFR 124.15 are not applicable to general permits due to different appeal procedures for general permits.)

#### K. Appeal Procedures

Appeal of the issuance of this general NPDES permit, or any conditions of this permit, is available in a Court of Appeals under section 509(b)(1)(F) of the CWA (33 U.S.C. 1369(b)(1)(F)). EPA regulations (40 CFR 124.71(a)) do not allow a request for an evidentiary hearing on EPA issued general NPDES permit. EPA regulations (40 CFR 124.111(a)(3)) do not allow a request for a non-adversary panel proceeding as this procedure was not used in processing the draft general NPDES permit.

### IV. Other Legal Requirements

#### A. The Endangered Species Act

The ESA requires that each Federal Agency shall ensure that any of their actions, such as permit issuance, do not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modifications of their habitats. In 1981 and 1982, the USFWS and the NMFS, NOAA respectively, presented biological opinions to the OME, NOAA regarding the effects on threatened or endangered species or their designated critical habitat of proposed deep seabed mining regulations for exploration licenses and the applications submitted by the consortia for exploration licenses. Copies of all opinions are contained in the administrative record for this permit. These actions were initiated pursuant to section 7 of the ESA (16 U.S.C. 1536). These biological opinions identify six (6) species of whales and four (4) species of

turtles found within or near the general permit area which are Federally listed endangered or threatened species, and could potentially be affected by the discharge activities to be authorized by this permit. The opinions presented by the USFWS and NMFS, NOAA generally concluded that exploration activities would not jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. As indicated above, these opinions covered even more activities that are covered in this general permit, which only deals with ancillary discharges which are typical of those from a vessel or other floating craft and de minimus quantities of materials from sampling devices. EPA has reviewed the conclusion of NOAA and believes that discharges under the effluent limitation and conditions in this permit are consistent with the ESA.

In addition, EPA provided a copy of the draft general permit and notice to both the USFWS and NMFS, NOAA advising them of the draft general permit and requested an evaluation of EPA's conclusion that the proposed permit would not affect threatened or endangered species. The USFWS responded that NMFS, NOAA had jurisdiction of all species of concern. NMFS, NOAA agreed with the conclusions of EPA. The responses of each agency are included in the administrative record and their opinions were fully considered.

EPA will continue both formal and/or informal consultation with NMFS, NOAA and USFWS with respect to any activities not now covered by their opinions. Additionally, EPA will initiate consultation should new information reveal impacts not previously considered if the activities are modified in a manner beyond the scope of the original opinion or should the activities affect a newly listed species. For a discussion of the affected species and the previous biological opinions, see Part III.H. Ocean Discharge Criteria.

#### B. The Coastal Zone Management Act

The CZMA and its implementing regulations (15 CFR Part 930) require that any federally licensed or permitted activity affecting the coastal zone of a State with an approved CZMP be determined to be consistent with the CZMP. In the PEIS, NOAA determined that the discharges in the area to be authorized under this general permit will not directly impact the coastal areas of any State. For the draft permit, EPA had reviewed this determination and concurred with NOAA's findings with regard to direct impact and had determined there would be no potential

impact on the CZMP of the State of Hawaii, the only State within the vicinity of the permitted area. This finding was based on representations by NOAA that any exploration activity for which discharges will be authorized by this permit will occur a considerable distance from the State of Hawaii, including the territorial seas. Therefore, due to this fact, there would be no unreasonable degradation of the marine environment due to factor 8 of the Ocean Discharge Criteria.

However, EPA was advised that a consistency determination under section 307(c)(3)(A) Subpart D of the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*) (CZMA) (16 U.S.C. 1456(c)(3)(A) Subpart D) was required. EPA submitted a written statement of consistency with the Hawaii Coastal Zone Management Program (CZMP) to the Hawaii Department of Planning and Economic Development (Hawaii DPED), which is the approved State agency for CZMP in Hawaii.

On August 30, 1984, the Hawaii DPED responded with a statement of concurrence with EPA's consistency certification. However, the concurrence was conditioned upon the Hawaii DPED being informed of anticipated or unanticipated bypasses. As such, a condition (Part I.E) was added to the final general permit which requires that dischargers notify the Hawaii DPED of anticipated or unanticipated bypasses of treatment facilities.

#### C. The Marine Protection, Research and Sanctuaries Act

The Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*) (MPRSA) regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes the Marine Sanctuaries Program implemented by NOAA, which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational ecological or aesthetic values.

Section 301(f) of the MPRSA (16 U.S.C. 1432(f)) requires that the Secretary of Commerce, after designation of a marine sanctuary, consult with other Federal agencies, and issue necessary regulations to control any activities permitted within the boundaries of the marine sanctuary. It also provides that no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purpose of the

marine sanctuaries program and can be carried out within its promulgated regulations. On January 13, 1984, NOAA proposed designation of the Hawaii Humpback Whale National Marine Sanctuary (49 FR 1788) which, in the area near the permitted area, applies to those waters found within the 100 fathom isobath around the Island of Hawaii. (Other notices appear at 49 FR 3523 (January 27, 1984) and 49 FR 4030 (February 1, 1984).) This general permit only authorizes discharges in the area of the Pacific Ocean between 110 degrees West and 180 degrees West longitude and 5 degrees North and 20 degrees North latitude that lies within the definition of the deep seabed as defined in section 4(4) of the DSHMRA (30 U.S.C. 1403(4)) and in NOAA regulations at 15 CFR 970.101(h). The deep seabed excludes any area that lies within the Continental Shelf, which includes areas to a depth of 200 meters. Therefore, any exploration activities authorized by the DSHMRA, and discharges authorized by this permit, would occur in those areas of the Pacific Ocean outside of a depths of 200 meters, which is deeper than 100 fathoms. Therefore, no discharges would occur within the proposed Hawaii Humpback Whale National Marine Sanctuary. In addition, due to the nature of the discharges to be authorized by this permit (which are ancillary discharges which are typical of those from a vessel or other floating craft and de minimus discharges from sampling devices), EPA believes there are no activities to be authorized by this permit which would be prohibited or regulated by the eventual designation of the Hawaii Humpback Whale National Marine Sanctuary.

#### *D. Economic Impact (Executive Order 12291)*

The Office of Management and Budget (OMB) has exempted this action from the review requirement of Executive Order 12291 pursuant to section 8(b) of the order.

#### *E. Paperwork Reduction Act*

EPA has reviewed the requirements imposed on regulated facilities in this final general permit under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) (PRA). The information collection requirements of this permit have already been approved by OMB in submissions made for the NPDES permit program under the provisions of the CWA. Furthermore, since less than ten (10) persons are subject to this general permit, EPA does not believe that this permit contains any information collection requests within the meaning of the PRA.

#### *F. Regulatory Flexibility Act*

Facilities authorized to discharge by this general permit will of necessity be, or be funded by, large capital ventures. In September 1981, NOAA issued a final regulatory flexibility analysis for the NOAA regulations for deep seabed mining exploration licenses. NOAA estimated an investment of \$1 billion per consortia will be needed to reach full-scale commercial recovery. Because of the large scale and high cost of these operations, it is very unlikely that small businesses will or could enter the market. Several small businesses might join together, or with large firms, in a cooperative effort, or be contractors or subcontractors for an individual consortium. However, in this instance, the costs of meeting the requirements of this permit would be shared by all the members of the consortium, and no one (1) small business would be significantly affected.

This permit requires no special sampling or monitoring requirements, except for residual chlorine in sanitary waste discharges, using a test procedure which is available at minimal cost. If the facility is intermittently manned or manned by nine (9) or fewer people, this requirement is waived. Furthermore, facilities that have an approved (under section 312 or the CWA (33 U.S.C. 1322)) marine sanitation device are deemed to be in compliance with the requirements of this permit and need not monitor or report residual chlorine in their sanitary waste discharges. Compliance with the effluent limitation for deck drainage (no discharge of free oil) is determined through the laboratory sheen test, requiring that a representative sample of deck drainage be sampled once every two (2) months, or once per voyage if the voyage is shorter than two (2) months, and analyzed for oil using the laboratory sheens test. It is expected that the laboratory sheen test would require an initial cost of approximately \$250 and an annual operating cost of \$50 (exclusive of labor cost). Flow rates for deck drainage, sanitary wastes and domestic wastes are to be estimated once per month. The permit requires no discharge of free oil for miscellaneous discharges; compliance is determined using a visible sheen test. This permit also requires proper operation and maintenance of sampling devices to prohibit or minimize the discharge of materials from the sampling devices; the permittee is required to estimate the quantity of material discharged from the sampling device each month. All the discharges shall not contain floating solids, visible foam or highly toxic compounds.

After review of the facts presented in the notice printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general permit will not have a significant impact on a substantial number of small entities. Furthermore, the permit reduces a significant administrative and financial burden on regulated sources because it does not require the filing of application forms to apply for authorization to discharge. This permit merely requires written notification from the permittees to EPA stating the commencement and termination of discharges from the facility.

Dated: September 24, 1984.

John Wise,

Acting Regional Administrator, Region 9.

#### **Appendix A—Response to Public Comments**

A public hearing was held on October 6, 1983, in San Francisco, California to receive public comment regarding the issuance of the general NPDES permit covering certain discharges from vessels engaged in exploration activities pursuant to the Deep Seabed Hard Mineral Resources Act (DSHMRA). Numerous comments were submitted to EPA at the public hearing and during the public comment period which closed on October 20, 1983. The following parties responded with comments:

Michael Herz, for the Oceanic Society, Clifton Curtis, for the Center for Law and Social Policy, United States Coast Guard, State of Hawaii, Department of Land and Natural Resources and National Oceanic and Atmospheric Administration, National Marine Fisheries Service.

The following parties testified at the October 6 public hearing:

Wesley Chesbor, Humboldt County (California) Supervisor for the Third District, W.D. Greenfield, for Ocean Minerals Company, Roy Gregory deGiere, for the Joint Committee on Fisheries and Aquaculture, Sacramento, California and Michael Herz, for the Oceanic Society and the following individual: Benjamin Van Cleve Andrews, II.

The following party submitted comments which were received after the close of the comment period on October 20, 1983:

University of Hawaii at Manoa.

Comments presented during the public comment period and at the public hearing were reviewed by EPA and

considered in the formulation of the final decision regarding the proposed permit. Our response to these comments is as follows:

*Comment:* Commenters argued that the issuance of the proposed permit is not authorized by existing legislation and serves no environmental purpose. Section 109(e) of the DSHMRA (30 U.S.C. 1419(e)) provides that the discharge of pollutants from vessels subject to the DSHMRA is also subject to the provisions of the Clean Water Act (CEA). A commenter contended, however, that a detailed reading of the CWA and NPDES regulations, along with the legislative history of section 109(e) of the DSHMRA (30 U.S.C. 1419(e)), indicates that Congress intended that routine discharges from survey vessels, engaged only in data and sample collection, should not be subject to NPDES requirements. One commenter stated that EPA did have authority under section 109(e) of the DSHMRA (30 U.S.C. 1419(e)) to issue this permit.

*Response:* EPA has determined jurisdiction exists to issue this permit and is doing so today. Section 109(e) of the DSHMRA (30 U.S.C. 1419(e)) states:

For the purposes of this chapter, any vessel or other floating craft engaged in commercial recovery or exploration shall not be deemed to be "a vessel or other floating craft" under section 502(12)(B) of the Clean Water Act and any discharge of a pollutant from such vessel or other floating craft shall be subject to the Clean Water Act.

Section 502(12)(B) of the CWA (33 U.S.C. 1362(12)(B)) states:

The term "discharge of a pollutant" and the term "discharge of pollutants" each means any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than from a vessel or other floating craft.

A literal reading of the DSHMRA and the CWA indicates that any discharge from vessels engaged in exploration under the DSHMRA is subject to the requirements of the Clean Water Act, including NPDES requirements. EPA believes it is clear that vessels engaged in oceanographic research for the purpose of resource evaluation are engaged in exploration under the DSHMRA; in fact, one commenter representing one of the consortia made such a statement at the public hearing.

The NPDES regulations do not eliminate the requirement of a NPDES permit for such discharges. The regulations in 40 CFR 122.2(a) codify the normal exclusion of dischargers from a vessel or other floating craft contained in section 502(12)(B) of the CWA (33 U.S.C. 1362(12)(B)) and provide for

certain discharges that do not require a NPDES permit. The regulation in 40 CFR 122.3(a) continues however, to provide exceptions for those discharges which would not require a NPDES permit and states that, "[t]his exclusion does not apply \* \* \* to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an emergency or mining facility. \* \* \* EPA has determined that vessels engaged in exploration under the DSHMRA are being operated in a capacity other than as a means of transportation, and therefore are not subject to the regulatory exclusion from NPDES requirements.

Congress did not indicate explicitly whether routine discharges from survey vessels, engaged in only data and sample collection, should or should not be subject to NPDES requirements. However, EPA believes that such vessels would be engaging in exploration activities as defined by the DSHMRA and therefore would not be eligible for the exclusion provided by section 502(12)(B) of the CWA (33 U.S.C. 1362(12)(B)). As such, EPA believes it is necessary to issue this permit in order to comply with the requirements of the DSHMRA and the CWA. For this reason, EPA believes it is legally required to issue this permit and is doing so today, even though there is a low potential for environmental degradation as a result of discharges from these operations. EPA also routinely subjects similar discharges from offshore drillships and drilling rigs and seafood processing vessels to NPDES requirements.

*Comment:* A commenter pointed out that the definition of exploration in the DSHMRA includes data and sample collection and in addition in section 4(5)(B) (30 U.S.C. 1403(5)(B)), "the taking from the deep seabed of such quantities of any hard mineral resource as are necessary for the design, fabrication, and testing of equipment which is intended to be used in the commercial recovery and processing of such resource." Since the permit does not authorize discharges from the initial testing of mining equipment, the commenter suggested that the vessels would not be engaging in exploration as defined by the DSHMRA and as such, an NPDES permit would not be appropriate.

*Response:* It is true that the permit does not authorize discharges from at-sea testing of mining equipment. Such discharges could include a discrete discharge from the collector at or near the ocean floor and a surface discharge of material brought up from the ocean

floor along with the nodules. EPA disagrees, however, that a discharge must engage in all of the activities outlined in the definition of exploration to be considered to be engaging in exploration.

*Comment:* A specific period of time should be required in Part II.D.1 of the permit for advance notice of activities which could result in noncompliance with permit requirements. This would provide EPA lead time to assess the impacts.

*Response:* Condition II.D.1 is a standard requirement for all NPDES permits issued by EPA (40 CFR 122.41(1)(2)). EPA does not believe that additional requirements are needed in light of the low potential for environmental degradation from the proposed operations.

*Comment:* Monitoring reports should be submitted more frequently than once/year.

*Response:* Monitoring frequencies and frequencies for submittal of monitoring reports represent a balance between the need for periodic demonstration of compliance with permit limits and the costs associated with sampling, analysis and reporting. EPA believes that the frequency of submittal of monitoring reports is appropriate given the low potential for environmental degradation due to the nature and characteristics of these discharges.

*Comment:* A commenter suggested various additional or different reporting requirements for Parts I.A. and II.D.2 of the permit with regard to potential discharges other than the nine (9) [currently ten (10)] discharges authorized by the permit.

*Response:* The permit does not authorize discharges other than those listed in the permit. EPA solicited comments as to the existence of discharges other than those proposed to be authorized by this permit and added another discharge in response to comments. Discharges other than the ten (10) authorized by the permit would be in violation of the Clean Water Act. If other discharges are found to exist, EPA will take appropriate action to modify this permit or issue another general or individual NPDES permit (as appropriate) to authorize and regulate the discharges.

*Comment:* Concern was expressed by a commenter regarding EPA's ability to enforce the provisions of the permit given the size of the permit area and the remoteness of the discharge sites. The development of a specific enforcement plan was recommended. Also, the problem of enforcement on foreign flag vessels should be addressed.

*Response:* In response to this comment, EPA has changed the definition of permittee in this general permit to be the U.S. citizen, as defined in section 4(14) of the DSHMRA (30 U.S.C. 1403(14)) and in NOAA regulations at 15 CFR 970.101(t), engaged in exploration activities as enumerated in this permit. Condition 1.A of the permit requires that the marine call letters assigned to an exploration vessel be provided to EPA with notice of commencement of operations. This will allow EPA to locate a given vessel at any time and conduct an inspection of the vessel to determine compliance with the permit requirements. Condition II.C.9 of the general permit requires permittees to allow "the Regional Administrator, or an authorized representative" to board the permittee's vessel to inspect and monitor facilities and operations regulated by the permit. This provision, which was derived from section 308 of the CWA (33 U.S.C. 1318) and 40 CFR 122.41(i), will require the permittee to ensure when contracting for the services of a survey vessel (U.S. or foreign flag), that EPA inspectors would be allowed to board the vessel. As such, EPA believes that compliance with permit conditions can be assured. EPA's compliance and monitoring activities would be supplemented by those of the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Coast Guard. Section 101(a) of the DSHMRA (30 U.S.C. 1411(a)) requires deep seabed explorers to obtain exploration licenses from NOAA which includes terms, conditions and restrictions on the licensed activities. Section 114 of the DSHMRA (30 U.S.C. 1424) requires NOAA licensees to allow NOAA observers to board exploration vessels to monitor exploration activities. The vessels would also be subject to Coast Guard regulations pertaining to pollution control.

*Comment:* Commenters disputed EPA's determination pursuant to section 403(c) of the CWA (33 U.S.C. 1343(c)) that the proposed discharges would not cause unreasonable degradation of the marine environment. A monitoring program in accord with 40 CFR 125.123 (c) and (d) was recommended.

*Response:* EPA has reviewed the section 403(c) (33 U.S.C. 1343(c)) determination made for the draft permit and has again determined that discharges operating under the effluent limitations and conditions for this permit will not cause unreasonable degradation of the marine environment, thereby allowing the permit to be issued. The discharges which will be authorized by the permit are discharges with the

normal operation of a ship and de minimus quantities of materials from sampling devices. EPA is not aware of any evidence indicating that these discharges would cause unreasonable degradation of the marine environment and has made this finding of no unreasonable degradation. For this reason, EPA has not required an additional monitoring program for section 403(c) of the CWA (33 U.S.C. 1343(c)) as required by 40 CFR 125.123(c). The final permit, however, does contain a reopener clause, in accordance with 40 CFR 125.123(d)(4), which allows the permit to be modified or revoked at any time if, on the basis of any new data, the Regional Administrator determines that continued discharges may cause unreasonable degradation of the marine environment.

*Comment:* Concern was expressed by several commenters regarding possible modification of the general permit to authorized discharges from mining activities for polymetallic sulfides on the Gorda Ridge, located off the coast of Northern California and Southern Oregon.

*Response:* This permit applies to discharges from vessels engaged in exploration activities subject to the Deep Seabed Hard Mineral Resources Act. These vessels would be exploring for manganese nodules within a specified rectangular area of the Pacific Ocean (110 to 180 degrees West longitude and 5 to 20 degrees North latitude). This area does not include the Gorda Ridge and is a considerable distance from the Gorda Ridge. Lease activity for exploration and development of polymetallic sulfides is being handled by the Minerals Management Service of the Department of the Interior under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*). The permit modification procedures at 40 CFR 122.62, 122.64 and 124.5 would be followed by EPA if this permit were ever modified to authorize discharges from mining activities in any other area. These procedures include formal public notice as well as notice to affected Federal, State and local agencies and all groups and individuals who have expressed an interest in such permits in the past. A public hearing would be held in the event of a significant degree of public interest.

*Comment:* The State of Hawaii requested that the definition of territorial seas (Part III.D.25) include the interisland channel waters as well as waters within three (3) miles of the shoreline.

*Response:* The northern boundary of the general permit area is 20 degrees North latitude. Only the southern portion of the Island of Hawaii is located within this area. As such, most interisland channel waters are already excluded from the general permit area.

On November 28, 1974, EPA transferred the authority to issue NPDES permits for discharges to the navigable waters of the State of Hawaii to the Hawaii Department of Health under section 402(b) of the CWA (33 U.S.C. 1342(b)). The definition of "[n]avigable waters" in section 502(7) of the CWA (33 U.S.C. 1362(7)) includes territorial seas. The definition of "territorial seas" contained in Part III.D.25 of the permit is that contained in section 502(8) of the CWA (33 U.S.C. 1362(8)). EPA believes the State's authority to issue NPDES permits is derived from Hawaii Rev. Stat. § 342-33 which limits the State's authority to "state waters". "State waters" includes coastal waters (Hawaii Rev. Stat. § 342-31(6)) which is defined as "all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast \* \* \*" (Hawaii Rev. Stat. § 342-31(1)). In addition, the U.S. Court of Appeals for the Ninth Circuit affirmed a holding of the U.S. District Court for the District of Hawaii that "the boundaries of Hawaii to be the Islands plus a three-mile belt around each." *Island Airlines, Inc. v. CAB*, 352 F. 2d 735, 736 (9th Cir. 1965). Therefore, EPA is not changing the definition of the territorial seas of the State of Hawaii.

*Comment:* Several commenters stated the monitoring requirements and frequencies are excessive in view of the limited environmental impacts which would be expected from the discharges. In particular, monitoring of the deck drainage was stated to be time consuming, possibly dangerous and meaningless. Commenters also stated that many of the discharges would be uncontaminated and are adequately controlled by U.S. Coast Guard and other regulations. In particular, it was stated (1) the discharge of oil in discharges from ships, such as deck drainage, is already adequately regulated by the U.S. Coast Guard, (2) no oil would be expected in discharges 004-007 and (3) the regulation of sewage discharges should be consistent with Annex IV to MARPOL 73/78. Therefore, EPA should not impose additional requirements on such discharges in the general permit.

*Response:* As previously stated, EPA believes that the Deep Seabed Hard Mineral Resources Act requires the issuance of an NPDES permit to

authorize the discharges in compliance with the Clean Water Act. The permit requirements pertaining to oil and grease in the discharges are consistent with the requirements of the CWA. In addition, section 311(a)(2) of the CWA (33 U.S.C. 1321(a)(2)) states that discharges in compliance with an NPDES permit are not subject to section 311 of the CWA (33 U.S.C. 1321) liability.

However, the monitoring requirements and frequencies in the final permit were reduced from those in the proposed permit in response to public comment and testimony that the proposed monitoring requirements were excessive. The monitoring requirements in the final permit do not represent an excessive burden on regulated facilities.

The final permit requires that a representative sample of deck drainage be sampled once every two (2) months, or once per voyage if the voyage is shorter than two (2) months, and analyzed for "free oil" using the laboratory sheen test. Deck drainage need not be sampled at every discrete discharge location.

The requirements for sampling and analysis of discharge 004-009 have been deleted in view of the limited potential for contamination of these sources. However, compliance with the requirement of no discharge of free oil is determined using the visible sheen test discussed in Part III.D.21 of the permit.

It should also be noted that for sanitary wastes, Condition I.B.4 of the permit provides that any facility using a marine sanitation device approved under section 312 of the CWA (33 U.S.C. 1322) shall be deemed to be in compliance with the permit. Such sanitation devices must comply with EPA regulations at 40 CFR Part 140 and U.S. Coast Guard regulations at 33 CFR Part 159. Annex IV to MARPOL 73/78 is not currently in effect and EPA believes that the former regulations are more appropriate for controlling this discharge.

*Comment:* The mining consortia have applied to NOAA for licenses to explore in specific areas within the overall area in which discharges would be authorized by the proposed permit. This information is confidential at this time. However, when the information becomes public in the future, a commenter suggested that the general permit should be modified to limit discharges to the areas requested in the applications. This would ensure the preservation of greater area for "stable reference areas."

*Response:* EPA has left the geographic area of the permit unchanged for two (2) reasons. First, the impact of the discharges is very limited in relation to

the considerable size of the permit area. EPA does not believe that the discharges authorized by the permit are a threat to the preservation of stable reference areas. Second, additional mining concerns may apply for licenses from NOAA to explore in new areas during the life of the permit. The discharges from vessels of additional consortia would be similar or the same as for the four (4) existing consortia. EPA has made its findings and conclusions based on activities in the entire permit area. If discharge sites were limited as the commenter proposed, discharges from such operations would require additional permit modifications or the issuance of additional permits. EPA believes that the discharges are adequately regulated by one (1) general permit and that considerable Agency resources would be unnecessarily expended in processing additional permits or permit modifications.

*Comment:* Concern was expressed by a commenter that deck drainage could be contaminated by residue from samples taken from the ocean floor.

*Response:* A representative of a consortium has indicated that box core samples would be well contained on the survey vessel. EPA believes the consortia will be careful in preserving the integrity of samples that are placed on the deck of the vessels. For these reasons, EPA has not established any additional limitations on deck drainage. In any event, the nature and quantity of material that is residue from the samples which might be washed overboard in deck drainage is likely to be very limited and not have any appreciable environmental effects.

*Comment:* Sampling of the ocean floor for the nodules could result in a discharge of pollutants not covered by the general permit. Nodule fragments and bottom sediments could be released into the water column as a sample was being brought to the surface. In addition, concern was expressed concerning retrieval of large nodule samples during exploration.

*Response:* EPA does not believe disturbances of sediments on the ocean floor by sampling and surveying activities to be discharges from a point source subject to the NPDES requirements of the CWA. In the fact sheet for the draft permit, EPA indicated that it did not believe there would be any discharge from the samplers used in conveying the sediment and nodule samples to the surface for collection, and invited specific comment on this conclusion. This commenter indicated there would be a discharge of nodule fragments and bottom sediments into

the water column from various sampling devices as a sample was being brought to the surface for retrieval. EPA has contacted the Ocean Mineral and Energy Division of NOAA, who informed EPA that if the sampling devices are properly operated and maintained, that there is little or no leakage or washing action of sediments and/or nodules to the water column when the samplers are being brought to the surface. However, there is a potential for discharge of sediments and/or nodules to the water column if the sampling devices are not properly operated and maintained. In addition, NOAA has indicated that exploration licenses will better define the nature of sampling to be allowed under the exploration licenses. However, due to the fact that there may in fact be such a discharge, EPA is authorizing discharge from sampling devices in the final permit and has designated this as discharge 010. A definition of sampling devices has been provided in Part III.D.28 of the permit. EPA has established a "best management practice" of proper operation and maintenance of the sampling device to prohibit or minimize discharge from the sampling device as the appropriate effluent limitation and condition to control such a discharge. Further discussion of this discharge, along with the conditions and monitoring requirements established for this discharge, is contained in the "FACT SHEET" portion of this notice. EPA is imposing this condition without additional opportunity for notice and comment because this issue was specifically discussed in the proposed permit.

*Comment:* "Free oil" should be limited in domestic wastes as well as deck drainage to prevent the routine disposal of petroleum products in domestic waste systems.

*Response:* The permit requirements for domestic wastes in this general permit are the same as the requirements for domestic waste discharges from offshore oil exploratory vessels. Based on several years of operating experience, these limits have been shown to be adequate and appropriate for the case of offshore oil exploratory vessels. In addition, EPA believes disposal of petroleum products in the domestic waste system could be handled under section 311 of the CWA (33 U.S.C. 1321). Since treatment opportunities and environmental impacts related to this discharge are likely to be similar for the two (2) cases, EPA believes that the permit requirements for the deep seabed survey

vessels are appropriate. As such, the limits in the final permit were not changed.

*Comment:* The "laboratory sheen test" is inadequate as a means for regulating the discharge of oil in wastewater. Numeric limits should be included in the permit.

*Response:* EPA has retained the "laboratory sheen test" to regulate the discharge of oil and grease as there is no evidence that it is not appropriate. EPA believes that only a very limited potential exists for environmental degradation from these discharges and that more precise effluent limitations and monitoring requirements are not necessary. It should be noted that this limit was developed for and is believed to be adequate for similar discharges from offshore oil facilities, where the potential for contamination is substantially greater.

*Comment:* The permit should specify more precisely what activities would be authorized by the permit.

*Response:* The purpose of this permit is to authorize and regulate the discharge of pollutants from vessels engaged in certain exploration activities rather than to specify exactly what exploration activities are allowed. However, the discharge limitations do place some constraints on exploration activities. The discharge of pollutants from at-sea tests of mining equipment prototypes is not authorized by the permit. Discharges from such equipment would include an ocean floor discharge from the nodule collector and a surface discharge of material brought to the surface along with the nodules. Discharges which are authorized by the permit are discharges associated with the normal operation of a ship and de minimus quantities of materials from sampling devices. Exploration activities consistent with this constraint include those activities listed at 15 CFR 970.701(a) and consist primarily of sample and miscellaneous data collection.

*Comment:* A commenter stated EPA does not have copies of the consortia's complete license applications to NOAA, and therefore the record for the NPDES permit is not complete; this situation does not allow for complete evaluation of this permit.

*Response:* The DSHMRA and NOAA regulations provide that complete copies of the non-confidential portions of the license applications are available for review at NOAA in Washington, D.C. NOAA is the lead Federal agency in dealing with deep seabed issues and provides for public input in NOAA licensing activities and regulation development. EPA believes that, due to

the nature of the discharges that are being authorized by this permit, the materials available for review in the administrative record for this permit are adequate for a complete evaluation of the permit.

**General NPDES Permit—Authorization To Discharge Under the National Pollutant Discharge Elimination System [NPDES Permit Number HIG100001]**

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*; the "Act"), the following discharges are authorized:

Deck Drainage (Discharge 001),  
Sanitary Wastes (Discharge 002),  
Domestic Wastes (Discharge 003),  
Water Distillation Discharge (Discharge 004),  
Boiler Blowdown (Discharge 005),  
Fire Control System Test Water (Discharge 006),  
Cooling Water (Discharge 007),  
Uncontaminated Ballast Water (Discharge 008),  
Uncontaminated Bilge Water (Discharge 009),  
Sampling Device Discharge (Discharge 010).

From a vessel or other floating craft subject to the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*; "DSHMRA") engaged in exploration activities under National Oceanic and Atmospheric Administration ("NOAA") Deep Seabed Mining Regulations for Exploration Licenses ("NOAA regulations") contained at 15 CFR Part 970, including, but not limited to exploration activities enumerated in section 101(a)(2) of the DSHMRA (30 U.S.C. 1411(a)(2)), and in NOAA regulations at 15 CFR 970.103(a)(2), except for any discharge from the initial mining tests, to receiving waters named the Pacific Ocean, in accordance with effluent limitations, monitoring and reporting requirements and other conditions set forth in Parts I, II, and III thereof.

The permittee shall be the U.S. citizen, as defined in section 4(14) of the DSHMRA (30 U.S.C. 1403(14)) and in NOAA regulations at 15 CFR 970.101(t), engaged in exploration activities as enumerated in this permit. Any permittee who fails to notify the Regional Administrator of his intent to be covered by this general permit as described in Part I is not authorized to discharge to the specified waters unless an individual NPDES permit has been issued to the facility by the Environmental Protection Agency ("EPA"), Region 9.

The authorized discharge sites include all the area of the Pacific Ocean between 110 degrees West and 180 degrees West longitude and 5 degrees North and 20 degrees North latitude that

lies within the definition of the deep seabed as defined in section 4(4) of the DSHMRA (30 U.S.C. 1403(4)) and in NOAA regulations at 15 CFR 970.101(h), including, but not limited to, the Northeastern Equatorial Pacific Ocean within the seabed generally known as the Clarion-Clipperton Fracture Zone. The authorized discharge sites specifically excludes all area which lies within the territorial seas of the State of Hawaii.

In accordance with EPA regulations contained at 40 CFR 125.123(d)(4), promulgated under section 403 of the Act (33 U.S.C. 1343), this permit shall be modified or revoked at any time if, on the basis of any new data, the Regional Administrator determines that continued discharges may cause unreasonable degradation of the marine environment. Permit modification or revocation will be conducted in accordance with EPA regulations contained at 40 CFR 122.62, 122.64, and 124.5.

This permit does not authorize discharges from "new sources" as defined in EPA regulations at 40 CFR 122.2.

The final general permit shall become effective on October 5, 1984.

This permit and the authorization to discharge shall expire at midnight, October 5, 1989.

Signed this 24th day of September 1984.  
John Wise,

Acting Regional Administrator, Region 9.

**Part I. Notification Requirements**

**A. Commencement of Operations**

Written notification of commencement of operations including the name and address of permittee, a description of the exploration activities and accompanying discharges and the general area in which the exploration will take place, shall be provided to the Regional Administrator at least fourteen (14) days prior to initiation of discharges. The marine call letters assigned to the exploration vessel shall also be provided. Any changes in the geographic area of exploration necessary during the course of the exploration, shall be reported in the annual monitoring report submitted pursuant to Part II.C.4 of this permit.

**B. Termination**

The permittee shall notify the Regional Administrator upon permanent termination of operations.

**C. Submission of Notification Requirements and Reports**

Reports and notifications required herein, shall be submitted directly to the Regional Administrator of Region 9 at the following address: Director, Water Management Division (W-1), Region 9, Environmental Protection Agency, Attention: Deep Seabed Mining General Permit, 215 Fremont Street, San Francisco, California 94105.

**D. Effective Date for Monitoring And Reporting Requirements**

The monitoring and reporting requirements in this permit shall take effect upon commencement of discharge. The first (1st) report is due on the

twenty-eighth (28th) day of the twelfth (12th) month from the day the Regional Administrator receives notification of commencement of operations. Subsequent reports are due every twelve (12) months thereafter.

**E. Submission of Bypass Notification Reports to the Hawaii Department of Planning and Economic Development**

Bypass notification reports as required by Part III.A.4(c) (1) and (2) of this permit shall also be submitted to the Director of the Hawaii Department of Planning and Economic Development at the following address and/or telephone: Director, Hawaii Department of Planning and Economic Development,

P.O. Box 2359, Honolulu, HI 96804, Telephone (808) 548-8727.

**Part II. Effluent Limitations, Monitoring and Reporting Requirements****A. Effluent Limitations and Monitoring Requirements**

1. During the period beginning the date notification of commencement of operations is received by the Regional Administrator and lasting through the expiration date of the permit, the permittee is authorized to discharge from outfall serial numbers 001-003,

a. Such discharges shall be limited and monitored by the permittee as specified below.

Serial numbers/outfalls	Effluent characteristics	Discharge limitation	Monitoring requirements	
			Measurement frequency	Sample type
001—Deck Drainage.....	Flow Rate (MGD).....	(1).....	Once/month.....	Estimate.
002—Sanitary Wastes.....	.....do.....	.....	.....do.....	Do.
003—Domestic Wastes.....	Residual Chlorine.....	1.0 mg/l <sup>2</sup> .....	Once/month.....	Discrete.
	Flow Rate (MGD).....	(2).....	Once/month.....	Estimate.

<sup>1</sup> There shall be no discharge of free oil as a result of this discharge. The permittee shall make visual observation for the presence of free oil in this discharge using the "laboratory shoen test" defined in Part III.D.17 of this permit. This test shall be conducted on a representative sample of deck drainage once every two (2) months, or once per voyage if the voyage is shorter than two (2) months, for this discharge, if this discharge occurs.

<sup>2</sup> Minimum of 1.0 mg/l and maintained as close to this concentration as possible. This requirement is not applicable to facilities intermittently manned or to facilities permanently manned by one (1) or fewer persons, in which case there shall be no floating solids as a result of the discharge of these wastes.

<sup>3</sup> There shall be no floating solids as a result of the discharge of these wastes.

b. Samples taken in compliance with monitoring requirements specified above shall be taken at a sampling point prior to commingling with any other waste stream or entering Pacific waters. In cases where sanitary and domestic wastes are mixed prior to discharge, and sampling of the sanitary waste component stream is infeasible, the discharge may be sampled after mixing. In such cases, the discharge limitation shown above for sanitary wastes shall apply to the mixed waste stream.

2.a. During the period beginning the date notification of commencement of operations is received by the Regional Administrator and lasting through the expiration date of the permit, the permittee is authorized to discharge from outfall(s) serial number(s) 004-009 (miscellaneous discharges). Discharge:

- 004—Water Distillation Discharge
- 005—Boiler Blowdown
- 006—Fire Control System Test Water
- 007—Cooling Water
- 008—Uncontaminated Ballast Water
- 009—Uncontaminated Bilge Water

b. There shall be no discharge of free oil as a result of this discharge as defined in Part III.D.21 of this permit.

3.a. During the period beginning the date notification of commencement of operations is received by the Regional Administrator and lasting through the expiration date of the permit, the permittee is authorized to discharge

from outfall serial number 010 (sampling device discharge).

b. The permittee shall at all times properly operate and maintain all sampling device(s) to prohibit or minimize the discharge of pollutants, including sediments and/or nodules, from the sampling device(s).

c. The permittee shall estimate the quantity of material discharged from the sampling device(s) each month.

**b. Other Discharge Limitations****1. Floating Solids or Visible Foam**

There shall be no discharge of floating solids or visible foam in other than trace amounts.

**2. Highly Toxic Compounds**

There shall be no discharge of toxic substances which, after allowance of initial mixing as provided by the Ocean Discharge Criteria (40 CFR Part 125, Subpart M), exceed applicable marine water quality criteria (45 FR 792318, November 28, 1980).

**3. Surfactants, Dispersants, and Detergents**

The discharge of surfactants, dispersants, and detergents shall be minimized except as necessary to comply with the safety requirements of the Occupational Safety and Health Administration and the U.S. Coast Guard.

**4. Sanitary Wastes**

Any facility using a marine sanitation device that complies with the pollution control standards and regulations under Section 312 of the Act (33 U.S.C. § 1322) shall be deemed to be in compliance with permit limitations for sanitary waste discharges until such time as the device is replaced or does not comply with such standards and regulations.

For facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons, there shall be no floating solids as a result of the discharge of these wastes.

**C. Monitoring and Records****1. Representative Sampling**

Samples and measurements taken for the purpose of monitoring shall be representative of the volume and nature of the monitored activity.

**2. Monitoring Procedures**

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

**3. Penalties for Tampering**

The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be

maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six (6) months per violation, or by both.

#### 4. Reporting of Monitoring Results

The permittee shall be responsible for submitting monitoring results for each vessel or other floating craft from which a discharge occurs.

If there is more than one (1) facility, the outfalls shall be designated in the following manner: 101, 102, 103, etc. for the first (1st) facility; 201, 202, 203, etc. for the second (2nd) facility; etc.

If any category of waste has more than one (1) discharge point, the limitations apply to each discharge point and shall be reported as XXXA, XXXB, XXXC, etc. (101A, 101B, 101C, etc.). This requirement does not apply to the laboratory sheen test for deck drainage (outfall 001), for which a representative sample is allowed.

Monitoring results obtained during the previous twelve (12) months shall be summarized and reported on a Discharge Monitoring Report Form (EPA No. 3320-1) (DMR).

If any category of waste (outfall) is not applicable due to the type of operation no reporting is required for that particular outfall. Only DMR's representative of the activities occurring need to be submitted. Information indicating the type of operation should be provided with the DMR's.

#### 5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant or parameter more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

#### 6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

#### 7. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by this permit for a period of at least three (3) years from the date of the sample, measurement, or report. This period may be extended by request of the Regional Administrator at any time.

#### 8. Record Contents

Records of monitoring information shall include:

- (a) The date, place, and time of sampling or measurements;
- (b) The individual(s) who performed the sampling or measurements;
- (c) The date(s) analyses were performed;
- (d) The individual(s) who performed the analyses;
- (e) The analytical techniques or methods used; and
- (f) The results of such analyses.

#### 9. Inspection and Entry

The permittee shall allow the Regional Administrator, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

- (a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

#### D. Reporting Requirements

##### 1. Anticipated Noncompliance

The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

##### 2. Monitoring Reports

Monitoring results shall be reported at the intervals specified in Part I.D and in Part II.A of this permit.

##### 3. Twenty-Four (24) Hour Reporting of Noncompliance

The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description

of the noncompliance and its cause; the period of noncompliance, including dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

The following shall be included as information which must be reported within twenty-four (24) hours:

- (a) Any unanticipated bypass which exceeds any effluent limitations in the permit;
- (b) Any upset which exceeds any effluent limitations in the permit; and
- (c) Violation of a maximum daily discharge limitation for any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance, listed as such by the Regional Administrator in the permit to be reported within twenty-four (24) hours.

Reports should be made to the telephone number: (415) 974-8289. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

#### 4. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Part II.D.3 at the time monitoring reports are submitted. The reports shall contain the information listed in Part II.D.3.

#### 5. Signatory Requirements

All reports or information submitted to the Regional Administrator shall be signed and certified in accordance with 40 CFR 122.22 as amended at 48 FR 39619 (Sept. 1, 1983).

#### 6. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Regional Administrator. As required by the Act, permit applications, permits, and effluent data shall not be considered confidential.

#### 7. Penalties for Falsification of Reports

The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per

violation, or by imprisonment for not more than six (6) months per violation, or by both.

### Part III. Operation and Maintenance of Pollution Controls, General Conditions, Additional Conditions and Definitions

#### A. Operation and Maintenance of Pollution Controls

##### 1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes, but is not limited to, effective performance, adequate funding, adequate permittee staffing and training, adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

##### 2. Duty to Halt or Reduce Activity

Upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced or lost.

##### 3. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permittee activity in order to maintain compliance with the conditions of this permit.

##### 4. Bypass of Treatment Facilities

(a) *Definitions.* (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) *Bypass not exceeding limitations.* The permittee may allow any bypass to

occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this section.

(c) *Notice—(1) Anticipated bypass.* If the permittee knows in advance of the need for a bypass, the permittee shall submit prior notice, if possible, at least ten (10) days before the date of the bypass.

(2) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in Part II.D.3 (24-hour notice).

(d) *Prohibition of bypass.* (1) Bypass is prohibited, and the Regional Administrator may take enforcement action against the permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate back-up equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (c) of this section.

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three (3) conditions listed above in paragraph (d)(1) of this section.

##### 5. Upset Conditions

(a) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate maintenance, or careless or improper operation.

(b) *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph (c) of this section are met. No determination, made during administrative review of claims that

noncompliance was caused by an upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the specific cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in Part II.D.3 (24-hour notice); and

(4) The permittee complied with any remedial measures required under Part III.B.4 (duty to mitigate).

(d) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

##### 6. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials for entering navigable waters.

#### B. General Conditions

##### 1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action or for requiring a permittee to apply for and obtain an individual NPDES permit.

##### 2. Duty to Comply With Toxic Effluent Standards

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act (133 U.S.C. 1317(a)) for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

##### 3. Penalties for Violations of Permit Conditions

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act (33 U.S.C. 1311, 1312, 1316, 1317, 1318, 1328, or 1345) is subject to a civil penalty not to exceed \$10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing

sections 301, 302, 303, 306, 307, 308 of the Act (33 U.S.C. 1311, 1312, 1313, 1316, 1317, or 1318) is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one (1) year, or both.

#### 4. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

#### 5. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

#### 6. Civil and Criminal Liability

Except as provided in permit conditions on "Bypasses" (Part III.A.4) and "Upsets" (Part III.A.5), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

#### 7. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act (33 U.S.C. 1321).

#### 8. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act (33 U.S.C. 1370).

#### 9. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

#### 10. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other

circumstances, and the remainder of this permit, shall not be affected thereby.

#### C. Additional General Permit Conditions

##### 1. When the Regional Administrator May Require Application for an Individual NPDES Permit

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

- (a) The discharge(s) is a significant contributor of pollution;
- (b) The discharger is not in compliance with the conditions of this permit;
- (c) A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
- (d) Effluent limitation guidelines are promulgated for point sources covered by this permit;
- (e) A Water Quality Management Plan containing requirements applicable to such point source is approved; or
- (f) The point source(s) covered by this permit no longer:

- (1) Involve the same or substantially similar types of operations;
- (2) Discharge the same types of wastes;
- (3) Require the same effluent limitations or operating conditions;
- (4) Require the same or similar monitoring; and
- (5) In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual NPDES permits.

The Regional Administrator may require any permittee authorized by this permit to apply for an individual NPDES permit only if the permittee has been notified in writing that a permit application is required.

##### 2. When an Individual NPDES Permit May be Requested

(a) Any permittee authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The permittee shall submit an application together with the reasons supporting the request to the Regional Administrator.

(b) When an individual NPDES permit is issued to a permittee otherwise subject to this general permit, the applicability of this permit to that permittee is automatically terminated on the effective date of the individual permit.

#### D. Definitions

1. "Annual average" means the average of all discharges sampled and/or measured during a calendar year in which daily discharges are sampled and measured, divided by the number of discharges sampled and/or measured during such year.

2. "Ballast water" means water used by the vessel or other floating craft for stability.

3. "Bilge water" means water that accumulates in the bilge of the vessel or other floating craft.

4. "Boiler blowdown" means the discharge or recirculating water from boilers to remove ionic concentrations contained in the water, preventing the further buildup of concentrations exceeding limits established by best engineering practice.

5. "CFR" means the Code of Federal Regulations.

6. For flow rate measurements, a "composite sample" means the arithmetic mean of no fewer than eight (8) individual measurements taken at equal intervals for twenty-four (24) hours or for the duration of the discharge, whichever is shorter.

For measurements other than flow rate, a composite sample means a combination of no fewer than eight (8) individual samples obtained at equal time intervals for twenty-four (24) hours or for the duration of the discharge, whichever is shorter.

7. "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits to the exploitation of the natural resources of such submarine area; and the seabed and subsoil of similar submarine areas adjacent to the coast of islands. (See section 4(2) of the DSHMRA (30 U.S.C. 1403(2)) and NOAA regulations at 15 CFR 970.101(f).)

8. "Cooling water" means once through non-contact cooling water.

9. "Daily maximum" means the average concentration of the parameter specified during any twenty-four (24) hour period that reasonably represents the twenty-four (24) hour period for the purposes of sampling.

10. "Deck drainage" means all waste resulting from vessel washings, deck washings, tank cleaning operations, and run-off from curbs, gutters, and drains including drip pans and wash areas.

11. "Deep seabed" means the seabed, and the subsoil thereof to a depth of ten (10) meters, lying seaward of and outside—(1) the Continental Shelf of any

nation; and (2) any area of national resource jurisdiction of any foreign nation, if such area extends beyond the Continental Shelf of such nation and such jurisdiction is recognized by the United States. (See section 4(4) of the DSHMRA (30 U.S.C. 1403(4)) and NOAA regulations at 15 CFR 970.101(h).)

12. A "discrete sample" means any individual sample collected in less than fifteen (15) minutes.

13. "Domestic wastes" includes discharges from galleys, sinks, showers, and laundries.

14. "EPA" means the U.S. Environmental Protection Agency.

15. "Fire control system test water" is seawater discharged during periodic testing of the fire control system.

16. "Initial mining test" means the taking from the deep seabed of such quantities of any hard mineral resources as are necessary for the design, fabrication and testing of equipment which is intended to be used in the commercial recovery and processing of such resource. (See section 4(5)(B) of the DSHMRA (30 U.S.C. 1403(5)(B)) and NOAA regulations at 15 CFR 970.101(i)(2).) Such testing is allowable under NOAA licenses; commercial recovery is not.

17. "Laboratory sheen test" means those procedures which involves

diluting one (1) part whole effluent, collected just prior to discharge, with nine (9) parts ambient seawater. This mixture shall be maintained as close as possible to ambient seawater temperature while being stirred mechanically with a magnetic stirrer for fifteen (15) minutes, after which time the permittee shall make a visual observation for the presence of free oil (sheen) on the surface. This protocol is in part derived from the Environmental Protection Technology Series EPA-R2-72-039, "The Appearance and Visibility of Thin Oil Films on Water".

18. "MGD" means million gallons per day.

19. "mg/l" means milligrams per liter.

20. "NOAA" means the National Oceanic and Atmospheric Administration.

21. "No discharge of free oil" means a discharge that does not cause a film or sheen upon or a discoloration on the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. Observe daily during discharge.

22. "NPDES" means the National Pollutant Discharge Elimination System.

23. "Permittee" means a person issued a permit to discharge pollutants to

navigable waters under the Federal Water Pollution Control Act, as amended. In this permit the permittee shall be the U.S. citizen, as defined in section 4(14) of the DSHMRA (30 U.S.C. 1403(14)) and in NOAA regulations at 15 CFR 970.101(t), engaged in exploration activities as enumerated in this permit.

24. "Sanitary waste" means human body waste discharged from toilets and urinals.

25. "Territorial seas" means the belt of the seas measured from the line of ordinary low water mark along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three (3) miles. (See section 502(8) of the Act (33 U.S.C. 1362(8)).)

26. "U.S.C." means the United States Code.

27. "Water distillation discharge" means wastewater associated with the process of creating fresh water from seawater.

28. "Sampling device" means any sampling device, including, but not limited to box cores, dredges and baskets, used to obtain samples of and/or from the deep seabed.

[FR Doc. 84-26348 Filed 10-4-84; 8:45 am]

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# **federal register**

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Friday  
October 5, 1984

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**Part IV**

**Office of  
Management and  
Budget**

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**Budget Deferrals; Notice**

**OFFICE OF MANAGEMENT AND  
BUDGET****Budget Deferrals**

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report two new deferrals of budget authority for 1984 totaling \$299,000,000, and

fourteen new deferrals of budget authority totaling \$1,298,662,275 and one new deferral of outlays totaling \$19,900,000 for 1985. The 1984 deferrals affect the Funds Appropriated to the President. The 1985 deferrals affect the Funds Appropriated to the President; the Departments of Agriculture, Defense, Health and Human Services, Interior, Transportation, and Treasury; the

Pennsylvania Avenue Development Corporation, and the Railroad Retirement Board.

The details of these deferrals are contained in the attached report.

Ronald Reagan.

The White House,

October 1, 1984.

BILLING CODE 3110-01-M

DEFERRAL OF BUDGET AUTHORITY  
Report Pursuant to Section 1013 of P.L. 93-344

Deferral #	Item	Budget Authority
D84-66	Funds Appropriated to the President	280,500
D84-67	International Security Assistance	18,500
	Economic support fund	299,000
	Military assistance	
	Total, deferrals	299,000

\*\*\*\*\*

SUMMARY OF SPECIAL MESSAGES  
FOR FY 1984  
(in thousands of dollars)

	Rescissions	Deferrals
Fourteenth special message:		
New items	---	299,000
Revisions to previous special messages	---	---
Effects of fourteenth special message	---	299,000
Amounts from previous special messages that are changed by this message (changes noted above)	---	---
Subtotal, rescissions and deferrals	---	299,000
Amounts from previous special messages that are not changed by this message	636,411	7,636,473
Total amount proposed to date in all special messages	636,411	7,935,473

AGENCY: Funds Appropriated to the President

Bureau: International Security Assistance

Appropriation title and symbol: Economic Support Fund 1/

114/51037

OMB Identification code: 11-1037-0-1-152

Grant program:  Yes  No

Type of account or fund:  Annual  Multiple-year March 31, 1985 (expiration date)  No-Year

Type of budget authority:  Appropriation  Contract authority  Other

Legal authority (in addition to sec. 1013):  Antideficiency Act  Other

Amount to be deferred: \$ 0

Part of year

Entire year

New budget authority... \$ 340,500,000 (P.L. 98-396)

Other budgetary resources 0

Total budgetary resources 340,500,000

Justification: Pursuant to the Foreign Assistance Act of 1961, as amended, the President is authorized to furnish assistance to promote economic or political stability in foreign countries on such terms and conditions as he may determine. To enable the president to carry out those authorities public Law 98-396 appropriates \$340,500,000 of grant and loan Economic Support Funds. Under Part II, Chapter 4, of the Foreign Assistance Act, the Secretary of State is responsible for policy decisions and justifications for such economic support programs, including the countries and amounts to be provided. Executive Order 12163 of September 29, 1979, further delegates the President's responsibilities under Chapter 4, related to policy decisions and justifications for economic support programs, to the Secretary of State. These functions will be exercised in cooperation with the Administrator of the Agency for International Development. The funds are deferred pending approval of specific loans and grants to eligible countries by the Secretary of State. This will insure that each approved program is consistent with the foreign, national security and financial policies of the U.S. and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: An estimated \$50,000,000 in outlays will be shifted from 1984 to 1985.

1/ This account was the subject of similar deferrals earlier in 1984 (D84-244 and D84-60) and in 1983 (D83-22A).

CONTENTS OF SPECIAL MESSAGE  
(in thousands of dollars)

Deferral #	Item	Budget Authority
D85-1	Funds Appropriated to the President	
D85-2	Appalachian regional development programs...	10,000
D85-3	International Security Assistance	
	Economic support fund.....	280,500
	Military assistance.....	18,500
D85-4	Department of Agriculture	
	Forest Service	
	Timber salvage sales.....	9,704
D85-5	Expenses, brush disposal.....	55,850
D85-6	Department of Defense - Military	
	Military construction, all services.....	300,008
D85-7	Department of Defense - Civil:	
	Wildlife Conservation, Military Reservations	
	Wildlife Conservation.....	1,127
D85-8	Department of Health and Human Services	
	Assistance Secretary for Health	
	Scientific activities overseas (special	
	foreign currency program).....	424
D85-9	Social Security Administration	
	Limitation on administrative expenses	
	(construction).....	15,488
D85-10	Department of the Interior	
	Bureau of Land Management	
	Payments for proceeds, sale of water,	
	Mineral Leasing Act of 1920.....	49
D85-11	Department of Transportation	
	Federal Aviation Administration	
	Facilities and equipment (airport and	
	airway trust fund).....	537,205
D85-12	Department of the Treasury	
	Office of Revenue Sharing	
	Local government fiscal assistance trust	
	fund.....	55,400
D85-13	Local government fiscal assistance trust	
	fund.....	19,900*
D85-14	Pennsylvania Avenue Development Corporation	
	Land acquisition and development fund.....	14,300
D85-15	Railroad Retirement Board	
	Milwaukee railroad restructuring	
	administration.....	108
	Total, deferrals.....	1,318,562

\* This is a deferral of outlays only.

\*\*\*\*\*

Deferral No: D84-67

DEFERRAL OF BUDGET AUTHORITY

Report pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President

Bureau: International Security Assistance

Appropriation title and symbol: Military Assistance I/

114/51080

New budget authority... \$ 140,000,000

(P.L. 98-396 )

Other budgetary resources 0

Total budgetary resources 140,000,000

Amount to be deferred:

Part of year \$ 0

Entire year 18,500,000

Legal authority (in addition to sec. 1013):  Antideficiency Act

Other

Type of budget authority:

Appropriation

Contract authority

Other

Type of account or fund:  Annual

Multiple-year March 31, 1985

No-Year (expiration date)

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the president is authorized to grant military assistance to any friendly country or international organization if he finds that it will strengthen the security of the United States or promote world peace. Public Law 98-396 appropriates \$140,000,000 of grant Military Assistance (MAP) funds to enable the President to carry out this authority. Executive Order No. 12163 of September 29, 1979, as amended, delegates certain Presidential functions under the FAA to the Secretaries of State and Defense. \$18,500,000 is being deferred pending approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limit of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None.

I/ This account was the subject of a similar deferral earlier in 1984 (D84-31) and in 1983 (D83-29A).

Deferral No: D85-1

DEFERRAL OF BUDGET AUTHORITY  
Report pursuant to Section 1013 of P.L. 93-344

SUMMARY OF SPECIAL MESSAGES  
FOR FY 1985  
(in thousands of dollars)

	Rescissions	Deferrals
First special message:		
New items.....	---	1,318,562
Revisions to previous special messages.....	---	---
Effects of first special message.....	---	1,318,562
Amounts from previous special messages that are changed by this message (changes noted above).....	---	---
Subtotal, rescissions and deferrals.....	---	1,318,562
Amounts from previous special messages that are not changed by this message.....	-----	-----
Total amount proposed to date in all special messages.....	---	1,318,562

AGENCY: Funds Appropriated to the President

Bureau: Appalachian Regional Development Programs

Appropriation title and symbol: Appalachian Regional Development Programs I/

11X0090

OMB identification code: 11-0090-0-1-452

Grant program:  Yes  No

Type of account or fund:  Annual  Multiple-year (expiration date)  No-Year

New budget authority..... \$ 149,000,000

Other budgetary resources 12,100,000

Total budgetary resources 161,100,000

Amount to be deferred:

Part of year \$ 0

Entire year 10,000,000

Legal authority (in addition to sec. 1013):  Antideficiency Act  Other

Type of budget authority:  Appropriation  Contract authority  Other

Justification: This appropriation provides funds for the Appalachian Regional Commission's highway, area development, and research and local development district support activities. The Commission is scheduled for termination on September 30, 1985. Funds associated with non-highway activities are deferred to pay the termination costs. Many of the Appalachian Regional Commission programs are multi-year in nature and will incur closing costs after the termination date of the Commission. The deferred funds, associated with non-highway programs, would be used to finance such closing costs.

Estimated Program Effect: This deferral action would provide for costs associated with closing down the Appalachian Regional Commission.

Outlay Effect: None.

1/ This account was the subject of a similar deferral in 1984 (D84-1).

DEFERRAL OF BUDGET AUTHORITY  
Report Pursuant to Section 1013 of P.L. 93-344

DEFERRAL OF BUDGET AUTHORITY  
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President (P.L.)  
 Bureau: International Security Assistance  
 Appropriation title and symbol: Economic Support Fund 1/  
 114/51037

New budget authority...: \$ 0  
 (P.L.)  
 Other budgetary resources 280,500,000  
 Total budgetary resources 280,500,000  
 Amount to be deferred: \$ 280,500,000  
 Part of year  
 Entire year 0

OMB Identification code: 11-1037-0-1-152  
 Legal authority (in addition to sec. 1013):  Antideficiency Act

Grant program:  Yes  No

Type of account or fund:  
 Annual  
 Multiple-year March 31, 1985 (expiration date)  
 No-Year

Type of budget authority:  
 Appropriation  
 Contract authority  
 Other

Justification: Pursuant to the Foreign Assistance Act of 1961, as amended, the President is authorized to furnish assistance to promote economic or political stability in foreign countries on such terms and conditions as he may determine. To enable the President to carry out those authorities Public Law 98-396 appropriates \$340,500,000 in grant and loan Economic Support Funds. Under part II, Chapter 4, of the Foreign Assistance Act, the Secretary of State is responsible for policy decisions and justifications for such economic support programs, including the countries and amounts to be provided. Executive Order 12163 of September 29, 1979, further delegates the President's responsibilities under Chapter 4, related to policy decisions and justifications for economic support programs, to the Secretary of State. These functions will be exercised in cooperation with the Administrator of the Agency for International Development. These funds are deferred pending approval of specific loans and grants to eligible countries by the Secretary of State. This will insure that each approved program is consistent with the foreign, national security and financial policies of the U.S. and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.  
 Outlay Effect: None.

1/ This account was the subject of similar deferrals in 1984 (D84-60, and D84-66).

AGENCY: Funds Appropriated to the President (P.L.)  
 Bureau: International Security Assistance  
 Appropriation title and symbol: Military Assistance 1/  
 114/51080

New budget authority...: \$ 0  
 (P.L.)  
 Other budgetary resources 140,000,000  
 Total budgetary resources 140,000,000  
 Amount to be deferred: \$ 18,500,000  
 Part of year  
 Entire year 0

OMB Identification code: 11-1080-0-1-152  
 Legal authority (in addition to sec. 1013):  Antideficiency Act

Grant program:  Yes  No

Type of account or fund:  
 Annual  
 Multiple-year March 31, 1985 (expiration date)  
 No-Year

Type of budget authority:  
 Appropriation  
 Contract authority  
 Other

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military assistance to any friendly country or international organization if he finds that it will strengthen the security of the United States or promote world peace. Public Law 98-396 appropriates \$140,000,000 of grant Military Assistance (MAP) funds to enable the President to carry out this authority. Executive Order No. 12163 of September 29, 1979, as amended, delegates certain Presidential functions under the FAA to the Secretaries of State and Defense. \$18,500,000 is being deferred pending approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limit of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.  
 Outlay Effect: None.

1/ This account was the subject of similar deferrals in 1984 (D84-31 and D84-67).

Deferral No: D85-4

DEFERRAL OF BUDGET AUTHORITY  
Report pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture  
Bureau: Forest Service  
Appropriation title and symbol: Timber salvage sales 1/  
12X5204

New budget authority... \$ 16,055,000  
(P.L. 94-588 (16 U.S.C. 472a(h)))  
Other budgetary resources 13,475,710  
Total budgetary resources 29,530,710

Amount to be deferred: \$ 0  
Part of year  
Entire year 9,703,710

OMB Identification code: 12-9922-0-2-301  
Legal authority (in addition to sec. 1013):  Antideficiency Act

Grant program:  Yes  No

Type of account or fund:  
 Annual  
 Multiple-year (expiration date)  
 No-Year

Type of budget authority:  
 Appropriation  
 Contract authority  
 Other

Justification: The Timber salvage sales fund was established under the provisions of the National Forest Management Act of 1976 so that immediate action can take place to harvest dead and dying trees when required by market conditions or catastrophes (such as the Mount St. Helens volcanic eruption). Fees paid by purchasers of dead, damaged, insect-infested or down timber to cover the expenses of these timber sales are used to finance subsequent sales in that National Forest. Contingency reserves are established under the provisions of the Antideficiency Act (31 U.S.C. 1512) because of the time lag between the deposit of receipts in one year and the expenditure of funds for sales operations in subsequent years.

Estimated Program Effect: None.

Outlay Effect: None.

1/ This account was the subject of a similar deferral in 1984 (D84-2).

Deferral No: D85-5

DEFERRAL OF BUDGET AUTHORITY  
Report pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture  
Bureau: Forest Service  
Appropriation title and symbol: Expenses, brush disposal 1/  
12X5206

New budget authority... \$ 41,822,000  
(P.L. 16 USC 490 )  
Other budgetary resources 55,865,019  
Total budgetary resources 97,687,019

Amount to be deferred: \$ 0  
Part of year  
Entire year 55,850,019

OMB Identification code: 12-9922-0-2-302  
Legal authority (in addition to sec. 1013):  Antideficiency Act

Grant program:  Yes  No

Type of account or fund:  
 Annual  
 Multiple-year (expiration date)  
 No-Year

Type of budget authority:  
 Appropriation  
 Contract authority  
 Other

Justifications: Fees are paid by purchasers of National Forest timber reflecting the estimated expenses of the Forest Service for disposing of brush and other debris resulting from cutting operations. Much of the brush disposal work for which fees are collected cannot be done in the same year because harvesting is not completed or due to seasonal weather conditions. In addition, extra fire protection by the Forest Service may be required for three to five years after the timber harvest. The Forest Service plans for a stable year-to-year program which will require \$41.8 million in 1985. A contingency reserve of \$55.8 million has been established for future expenses under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effects: None.

1/ This account was the subject of a similar deferral in 1984 (D84-3).

Deferral No: D95-6

DEFERRAL OF BUDGET AUTHORITY  
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense - Military

Bureau: \_\_\_\_\_

Appropriation title and symbol: \_\_\_\_\_

See Coverage Section below 1/

OMB identification code: \_\_\_\_\_  
See Coverage Section below 1/

Grant program:  Yes  No

Type of account or fund:  
 Annual Sept. 30, 1985  
 Sept. 30, 1986  
 Multiple-year Sept. 30, 1987  
 Sept. 30, 1988  
 No-Year (expiration date)

New budget authority....\$ 0  
 (P.L. \_\_\_\_\_)  
 Other budgetary resources 3,875,724,161  
 Total budgetary resources 3,875,724,161

Amount to be deferred: \$ 300,008,232  
 Part of year \_\_\_\_\_  
 Entire year \_\_\_\_\_

Legal authority (in addition to sec. 1013):  Antideficiency Act  
 Other \_\_\_\_\_

Type of budget authority:  
 Appropriation  
 Contract authority  
 Other \_\_\_\_\_

Coverage: 1/

Appropriation	Symbol	OMB Identification Code	Amount Deferred
Military construction, Army	214/82050	21-2050-0-1-051	\$ 9,000,000
Military construction, Army	213/72085	21-2085-0-1-051	--
Military construction, Army	212/62085	21-2085-0-1-051	--
Military construction, Army	211/52085	21-2050-0-1-051	--
Military construction, Navy	174/81205	17-1205-0-1-051	--
Military construction, Navy	173/71235	17-1235-0-1-051	50,364,352
Military construction, Navy	172/61235	17-1205-0-1-051	12,679,880
Military construction, Navy	171/51235	17-1205-0-1-051	--
Military construction, Air Force	574/83300	57-3300-0-1-051	--
Military construction, Air Force	573/73300	57-3300-0-1-051	--
Military construction, Air Force	572/63300	57-3300-0-1-051	--
Military construction, Air Force	571/53300	57-3300-0-1-051	--
Military construction, Defense Agencies	974/80500	97-0500-0-1-051	5,000,000
Military construction, Defense Agencies	973/70500	97-0500-0-1-051	5,200,000
Military construction, Defense Agencies	972/60500	97-0500-0-1-051	6,864,000
Military construction, Defense Agencies	971/50500	97-0500-0-1-051	--

Appropriation	Symbol	OMB Identification Code	Amount Deferred
Military construction, Army National Guard	214/82085	21-2085-0-1-051	--
Military construction, Army National Guard	213/72085	21-2085-0-1-051	--
Military construction, Army National Guard	212/62085	21-2085-0-1-051	--
Military construction, Army National Guard	211/52085	21-2085-0-1-051	--
Military construction, Air National Guard	574/83830	57-3830-0-1-051	10,900,000
Military construction, Air National Guard	573/73830	57-3830-0-1-051	--
Military construction, Air National Guard	572/63830	57-3830-0-1-051	--
Military construction, Air National Guard	571/53830	57-3830-0-1-051	--
Military construction, Army Reserve	214/82086	21-2086-0-1-051	--
Military construction, Army Reserve	213/72086	21-2086-0-1-051	--
Military construction, Army Reserve	212/62086	21-2086-0-1-051	--
Military construction, Army Reserve	211/52086	21-2086-0-1-051	--
Military construction, Naval Reserve	174/81235	17-1235-0-1-051	--
Military construction, Naval Reserve	173/71235	17-1235-0-1-051	--
Military construction, Naval Reserve	172/61235	17-1235-0-1-051	--
Military construction, Naval Reserve	171/51235	17-1235-0-1-051	--
Military construction, Air Force Reserve	574/83730	57-3730-0-1-051	--
Military construction, Air Force Reserve	573/73730	57-3730-0-1-051	--
Military construction, Air Force Reserve	572/63730	57-3730-0-1-051	--
Military construction, Air Force Reserve	571/53730	57-3730-0-1-051	--
North Atlantic Treaty Organization Infrastructure	97X0804	97-0804-0-1-051	200,000,000
Military construction, Reserve Components, Generally	97Z/50805	21-2086-0-1-051	300,008,232

Justification: These funds are deferred due to administrative delays, such as project designs not being completed and incomplete coordination of projects with other Federal agencies of local government agencies. Funds will be apportioned for individual projects throughout the year upon completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None.

1/ These accounts were the subject of a similar deferral in 1984 (984-5A).

Estimated Program Effect: None.  
Outlay Effect: None.

1/ These accounts were the subject of a similar deferral in 1984 (D84-7).

Deferral No: D85-7

DEFERRAL OF BUDGET AUTHORITY  
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense - Civil

Bureau: Wildlife Conservation, Military Reservations

Appropriation title and symbol: Wildlife Conservation, Army - 21X5095  
Wildlife Conservation, Navy - 17X5095  
Wildlife Conservation, Air Force - 57X5095

New budget authority..... \$ 1,721,000  
(16 U.S.C. 670F)  
Other budgetary resources 1,167,197  
Total budgetary resources 2,888,197

Amount to be deferred: \$ 0  
Part of year  
Entire year 1,127,197

Legal authority (in addition to sec. 1013):  Antideficiency Act  
 Other

Type of budget authority:  
 Appropriation  
 Contract authority  
 Other

Type of account or fund:  
 Annual  
 Multiple-year (expiration date)  
 No-Year

Coverage: 1/

Appropriation	Symbol	OMB Identification Code	Amount Deferred
Wildlife Conservation, Army.....	21X5095	21-5095-0-2-303	\$825,000
Wildlife Conservation, Navy.....	17X5095	17-5095-0-2-303	146,000
Wildlife Conservation, Air Force	57X5095	57-5095-0-2-303	156,197
			\$1,127,197

Justification: These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law--to carry out a program of natural resource conservation. These funds are being deferred because: (1) installations may be accumulating funds over a period of time to fund a major project, (2) the installation may be designing and obtaining approval for the project, and (3) there is a seasonal relationship between the collection of fees and their subsequent expenditure. Most of the fees are collected during the winter and spring months, while most of the program work is performed during the summer and fall months. This necessitates that funds collected in a prior year be deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned if program requirements are identified. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Deferral No: D85-8

DEFERRAL OF BUDGET AUTHORITY  
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services  
Bureau: Assistant Secretary for Health  
Appropriation title and symbol: Scientific activities overseas (special foreign currency program) 1/  
75X1102

New budget authority.... \$ 0  
(P.L.)  
Other budgetary resources 7,080,399  
Total budgetary resources 7,080,399  
Amount to be deferred: \$ 0  
Part of year  
Entire year 423,762

OMB identification code: 75-1102-0-1-552  
Legal authority (in addition to sec. 1013):  Antideficiency Act

Grant program:  Yes  No

Type of account or fund:  
 Annual  
 Multiple-year (expiration date)  
 No-Year

Type of budget authority:  
 Appropriation  
 Contract authority  
 Other

Justification: The Scientific activities overseas program is funded with appropriations of excess foreign currencies owned by the United States. The currencies of Burma, Guinea, India, and Pakistan held by the Treasury have been designated as excess to normal U.S. needs in 1984 and are expected to be excess in 1985. Funds for this program, which remain available until expended, are used for scientific research projects in those countries.

The amount of funds to be obligated during 1985 and the amount to be deferred for the entire year were determined after a careful review of the scientific merit of project proposals in the countries for which excess currency is available. The research projects in those countries that will contribute toward meeting U.S. scientific needs have been selected for funding in 1985. The amount being deferred is excess to current program requirements and is being reserved under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None.

1/ This account was the subject of a similar deferral in 1984 (D84-9A).

Deferral No: D85-9

DEFERRAL OF BUDGET AUTHORITY  
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services  
Bureau: Social Security Administration  
Appropriation title and symbol: Limitation on Administrative Expenses (Construction) 1/  
75X8704

New budget authority.... \$ 0  
(P.L.)  
Other budgetary resources 26,147,978  
Total budgetary resources 26,147,978  
Amount to be deferred: \$ 0  
Part of year  
Entire year 15,487,881

OMB identification code: 20-8007-0-7-571  
Legal authority (in addition to sec. 1013):  Antideficiency Act

Grant program:  Yes  No

Type of account or fund:  
 Annual  
 Multiple-year (expiration date)  
 No-Year

Type of budget authority:  
 Appropriation  
 Contract authority  
 Other

Justification: This account provides funding for construction and renovation of the Social Security Administration's (SSA) headquarters and field office buildings. This deferral represents the amounts provided in past years which SSA will not need in 1985 to carry out its current plans in this account. The deferred amount is a result of changes to prior year construction plans. Should SSA's plans change, subsequent apportionments will include revisions to this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None.

1/ This account was the subject of a similar deferral in 1984 (D84-10A).

Deferral No: D85-10

DEFERRAL OF BUDGET AUTHORITY  
Report Pursuant to Section 1013 of P.L. 93-344

**AGENCY:**  
Department of the Interior

**Bureau:**  
Bureau of Land Management

**Appropriation title and symbol:**  
Payments for Proceeds, Sale of Water, Mineral Leasing Act of 1920, Sec. 40(d) 1/

**New budget authority..... \$** 0  
**Other budgetary resources** 48,500  
**Total budgetary resources** 48,500  
**Amount to be deferred:**  
**Part of year** \$ 0  
**Entire year** 48,500

**Legal authority (in addition to sec. 1013):**  Antideficiency Act

**OMB identification code:**  
14-5662-0-2-301

**Grant program:**  Yes  No

**Type of account or fund:**  
 Annual  
 Multiple-year (expiration date)  
 No-Year

**Type of budget authority:**  
 Appropriation  
 Contract authority  
 Other Permanent, Indefinite, Special

**Justification:** Section 40(d) of the Mineral Leasing Act of 1920 (30 U.S.C. 229(a)) provides that when lessees or operators drilling for oil or gas on public lands strike water, water wells may be developed by the Department of the Interior from the proceeds from the sale of water from existing wells. Receipts have been accruing to this permanent account at the rate of about \$3,000 per year. None of these receipts have been obligated over the past ten years and none are planned for obligation in 1985 because the total available is too small to be put to practical use for the purpose designated by law. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

**Estimated Program Effect:** None.

**Outlay Effect:** None.

1/ This account was the subject of a similar deferral in 1984 (D84-11).

Deferral No: D85-11

DEFERRAL OF BUDGET AUTHORITY  
Report Pursuant to Section 1013 of P.L. 93-344

**AGENCY:**  
Department of Transportation

**Bureau:**  
Federal Aviation Administration

**Appropriation title and symbol:**  
Facilities and equipment (Airport and airway trust fund) 1/

**New budget authority..... \$** 0  
**Other budgetary resources** 943,205,361  
**Total budgetary resources** 943,205,361  
**Amount to be deferred:**  
**Part of year** \$ 0  
**Entire year** 537,205,361

**Legal authority (in addition to sec. 1013):**  Antideficiency Act

**OMB identification code:**  
69-8107-0-7-402

**Grant program:**  Yes  No

**Type of account or fund:**  
 Annual  
 Multiple-year (expiration date)  
 No-Year

**Type of budget authority:**  
 Appropriation  
 Contract authority  
 Other

**Justification:** Funds from this account are used to continue to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the National Airspace System. The projects financed from this account include construction of buildings and the purchase of new equipment for new or improved air traffic control towers, automation of the en route airway control system and expansion and improvement in the navigational and landing aid systems. These activities were justified and provided for in the Department's regular budget submissions and were appropriated by Congress for the year in which requested. Due to the lengthy procurement and construction time for interrelated facilities and complex equipment systems, it is not possible to obligate all the funds necessary to complete each project in the year funds were appropriated. Therefore, it is necessary to defer these funds. This action is consistent with FAA's full funding approach and Congressional intent to provide multi-year funding for the total costs of projects. This action is taken under provisions of the Antideficiency Act (31 U.S.C. 1512), which authorizes the establishment of reserves for contingencies.

**Estimated Program Effect:** None.

**Outlay Effect:** None.

1/ This account was the subject of a similar deferral in 1984 (D84-14).

Deferral No: D85-12

DEFERRAL OF BUDGET AUTHORITY  
Report pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of the Treasury  
 Bureau: Office of Revenue Sharing  
 Appropriation title and symbol:  
 Local Government Fiscal Assistance Trust Fund 1/  
 20X8111

New budget authority.... \$4,566,700,000  
 (P.L. 98-371)  
 Other budgetary resources 55,400,000  
 Total budgetary resources 4,622,100,000

Amount to be deferred:  
 Part of year \$ 2,500,000  
 Entire year 52,900,000

Legal authority (in addition to sec. 1013):  Antideficiency Act  
 Other P.L. 94-488 P.L. 96-604, P.L. 97-512, P.L. 98-45

Type of budget authority:  
 Appropriation  
 Contract authority  
 Other

Grant program:  Yes  No

Type of account or fund:  
 Annual  
 Multiple-year (expiration date)  
 No-Year

Justification: The Secretary of the Treasury must hold in reserve an amount sufficient to meet valid claims from local governments that past revenue sharing payments have been too small. This cumulative unobligated reserve is available to satisfy legitimate claims against the trust fund for any prior entitlement periods. This unobligated reserve will be further reduced whenever the Secretary determines the amount is adequate to meet foreseeable liabilities against the trust fund and will be paid to recipients as part of the regular distribution. This action will postpone distribution of the amount in the reserve until necessary adjustments and corrections have been identified. It will also avoid substantial confusion and complexities in the administration of the program. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.  
 Outlay Effect: None.

1/ This account is subject to another deferral (D85-13) and was the subject of a similar deferral in 1984 (D84-15).

Deferral No: D85-13

DEFERRAL OF BUDGET AUTHORITY  
Report pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of the Treasury  
 Bureau: Office of Revenue Sharing  
 Appropriation title and symbol:  
 Local Government Fiscal Assistance Trust Fund 1/  
 20X8111

New budget authority.... \$4,566,700,000  
 (P.L. 98-371)  
 Other budgetary resources 55,400,000  
 Total budgetary resources 4,622,100,000

Amount to be deferred:  
 Part of year \$ 19,900,000  
 Entire year 0

Legal authority (in addition to sec. 1013):  Antideficiency Act  
 Other P.L. 94-488 P.L. 96-604, P.L. 92-512, P.L. 98-45

Type of budget authority:  
 Appropriation  
 Contract authority  
 Other

Grant program:  Yes  No

Type of account or fund:  
 Annual  
 Multiple-year (expiration date)  
 No-Year

Justification: The Local Government Fiscal Assistance Trust Fund is the vehicle for disbursement of general revenue sharing funds. This deferral represents payments withheld from various governments involved in annexations or disincorporations and for reasons of non-compliance with the requirements of the Local Government Fiscal Assistance Amendments of 1983. The release of these funds is contingent upon adherence by the various governments to the compliance regulations, and determinations as to which higher level of government is eligible to receive those funds withheld because of annexations and disincorporations. The amount being deferred is the projected carryover of outlays into 1985. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.  
 Outlay Effect: None.

1/ This account is subject to another deferral (D85-12) and was the subject of a similar deferral in 1984 (D84-16).

Deferral No: D85-14

DEFERRAL OF BUDGET AUTHORITY  
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Pennsylvania Avenue Development Corp.

Bureau: 28,461,473

Appropriation title and symbol: Land Acquisition and Development Fund

42X4084 1/

OMB Identification code: 42-4084-0-3-451

Grant program:  Yes  No

Type of account or fund:  Annual  Multiple-year (expiration date)  No-Year

Type of budget authority:  Appropriation  Contract authority  Other Borrowing authority

Justification: This account provides funds to acquire private property for redevelopment in the Pennsylvania Avenue project area. In 1974 the PADC land use plan for the eastern sector of the project area was reviewed and updated in light of real estate trends and market conditions. PADC does not plan significant new federally financed-land acquisition activity in the PADC corridor in 1985. \$14.3 million is deferred pursuant to the Antideficiency Act (15 U.S.C. 1512) to establish a reserve for use in specified cases where private sector resources must be supplemented to ensure that new development will be consistent with the updated eastern sector plan. Funds will be released on a case-by-case basis to solve problems when development is delayed by owners declining to sell property at a fair price, title difficulties, or other causes. In most cases, PADC would purchase the property for later resale to the private sector.

Estimated Program Effect: None.

Outlay Effect: None.

1/ This account was the subject of a similar deferral in 1984 (D84-17).

Deferral No: D85-15

DEFERRAL OF BUDGET AUTHORITY  
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Railroad Retirement Board

Bureau: 231,613

Appropriation title and symbol: Milwaukee Railroad Restructuring Administration 1/

60X0108

OMB Identification code: 60-0108-0-1-603

Grant program:  Yes  No

Type of account or fund:  Annual  Multiple-year (expiration date)  No-Year

Type of budget authority:  Appropriation  Contract authority  Other

Justification: This account funds the administrative expenses incurred by the Board in disbursing benefit payments under the Milwaukee Railroad Restructuring Act. The Board estimates that only \$124,000 in administrative expenses will be needed in 1985, and \$107,613 will either be needed in 1986 or will be returned to the Treasury at the expiration of the program. The deferral is made under the provisions of the Anti-deficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None.

1/ This account was the subject of a similar deferral in 1984 (D84-18).

[FR Doc. 84-26526 Filed 10-4-84; 8:45 am]  
BILLING CODE 3110-01-C

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# **federal register**

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Friday  
October 5, 1984

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## **Part V**

### **Department of Defense**

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**Corps of Engineers, Department of the  
Army**

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**33 CFR Parts 320, 323, 325, and 330  
Final Regulations for Controlling Certain  
Activities in Waters of the United States**

## DEPARTMENT OF DEFENSE

## Corps of Engineers, Department of the Army

## 33 CFR Parts 320, 323, 325, and 330

## Final Regulations for Controlling Certain Activities in Waters of the United States

AGENCY: Army Corps of Engineers, DOD.

ACTION: Final rule.

**SUMMARY:** The Department of the Army is amending the Corps of Engineers permit regulations for controlling certain activities in the waters of the United States. This final rule is published to comply with requirements of a settlement agreement reached in *National Wildlife Federation v. Marsh*, No. 82-3632 (D.D.C. December 22, 1982). These changes include several policy and procedural changes and modifications to certain nationwide permits. The major effect of this rule is to establish reporting requirements and procedures.

**EFFECTIVE DATE:** October 5, 1984.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sam Collinson or Mr. Bernie Goode, Regulatory Branch, (202) 272-0199

**SUPPLEMENTARY INFORMATION:** In December of 1982, 16 environmental organizations filed suit against the Department of the Army and the U.S. Environmental Protection Agency (*NWF v. Marsh*) over several provisions of the Corps of Engineers interim final regulations published on July 22, 1982 (47 FR 31794). Nine industrial groups intervened in support of the Army and EPA. On February 10, 1984, the court approved a settlement agreement between the plaintiffs and defendants whereby the Army agreed to publish regulations proposing several policy and procedural changes and modifications to certain nationwide permits. The settlement agreement was endorsed by the Army, EPA, the Department of Justice, the 16 environmental organizations, and two industrial groups. The Army believes the settlement agreement strikes a reasonable balance between environmental protection and an effective and responsive regulatory program. The settlement agreement did not commit the Army to promulgate any particular final regulations. All comments received on the March 29, 1984, proposed regulations were evaluated and considered in promulgating these final regulations.

## Environmental Documentation

We have determined that this action does not constitute a major federal action significantly affecting the quality of the human environment.

Appropriate environmental documentation is prepared for all permit decisions. Environmental assessments for each of the nationwide permits issued today are available from the Corps of Engineers. We determined that, considering the potential impacts, required conditions, discretionary authority and best management practices, none would require preparation of an environmental impact statement.

## Public Comments

We received over 150 comments on the March 29, 1984, proposed regulations (49 FR 12660), which comments covered a full range of views. We also received nearly 200 comments on the July 22, 1982, interim final regulations (47 FR 31794) and nearly 500 comments on the May 12, 1983, proposed regulations (48 FR 21466). The comments on the 1982 and the 1983 regulations which pertained to provisions of the March 29, 1984, regulations were also considered in the development of these final regulations. The comments on the 1982 and the 1983 regulations which do not pertain to the provisions of the March 29, 1984, proposal will be considered during the development of those final regulations. The March 29, 1984, proposals were adopted as published except for changes in § 330.4(b), 330.5(a), 330.5(a)(17), and 330.5(a)(26). A new § 330.5(c) has been added. See discussion below.

## Part 320—General Regulatory Policies

## Section 320.4(a)(1)

In accordance with the proposal, this paragraph clarifies the fact that no 404 permit can be issued unless it complies with the 404(b)(1) guidelines. If a proposed action complies with the guidelines, a permit will be issued unless the district engineer determines that it will be contrary to the public interest. A number of commenters were concerned that this section now shifts the "burden of proof" with respect to the public interest from the applicant to the Corps. As a practical matter, both the current wording and the wording being adopted by this change describe the same public interest balancing process. The district engineer may issue a permit when he has determined, after weighing the benefits and detriments of a proposal, that the activity requiring a permit will not be harmful to the public interest. The responsibility for weighing

the benefits of a proposed activity against the detriments has always been and remains vested in the Corps of Engineers.

## Section 320.4(b)(4)

In accordance with the proposal, this paragraph states that the district engineer will apply the 404(b)(1) guidelines (40 CFR 230.10(a) (1), (2), (3)) in evaluating whether a particular discharge of dredged or fill material into waters of the United States shall be permitted.

## Section 320.4(c)

In accordance with the proposal, the last sentence of this paragraph states that district engineers will give "full consideration" to the views of federal and state fish and wildlife agencies in permit decisions. Many commenters misunderstood the intent of this change. They believed that the effect of changing the wording from "great weight" to "full consideration" placed unwarranted significance on these resource agency views. Some suggested this amounted to a veto power for federal and state agencies that was beyond the scope of section 404. Other commenters saw the change as having just the opposite effect (i.e., weakening the degree of consideration given to resource agency comments). The intent and the probable effect of the change in modifiers have largely been misinterpreted. The basis for making the change to "full consideration" was to reflect the statutory language of the Fish and Wildlife Coordination Act; this term is also consistent with the National Environmental Policy Act and other legal authority.

## Section 320.4(g)

In accordance with the proposal, this paragraph recognizes the right to reasonable private use of property as a factor in the public interest review. Comments on this paragraph covered a broad range of views, some supporting the change, others feeling that this change adversely impacts individual property rights. The expectations and wishes of a private property owner have been generally considered in the processing of permit applications, even though these rights were not hitherto explicitly listed as a factor in the Corps public interest review. These expectations may not prevail when public interest considerations lead to denial or conditioning of a permit.

## Section 320.4(j)(2)

In accordance with the proposal, this paragraph clarifies that the district

engineer will normally consider the decisions of state, local, and tribal governments on land use matters to be conclusive as to this factor in the public interest review. Many commenters interpreted this change to mean that the Corps would automatically base its permit decisions on existing or planned zoning or land use designations, or on the permit decisions of a state, local or tribal government rather than its current objective public interest review. This interpretation is not correct. Land use is one of several factors considered by the Corps in the public interest review (33 CFR 320.4(a)). The intent of this paragraph is to recognize that the primary responsibility for addressing this factor (i.e., local zoning and/or land use matters) rests with state, local and tribal governments. When a state, local, or tribal government gives its zoning or other land use approval for a particular project, this will be considered conclusive for this factor. However, the Corps will continue to perform a thorough, objective evaluation of each application in full compliance with applicable regulations and laws.

#### Part 323—Permits for Discharges of Dredged or Fill Material Into Waters of the United States

##### Section 323.4(a)(3)

In accordance with the proposal, this paragraph clarifies the types of appurtenant structures to irrigation facilities for which the discharges associated with such structures are exempt from the provisions of these regulations unless otherwise regulated under paragraphs (b) and (c) of this section. The comments on this paragraph of the proposal were reviewed by EPA and the following discussion was prepared by that agency in light of its responsibility to interpret section 404(f).

While a number of commenters supported the language of this paragraph as written, others suggested revisions which, as discussed below, EPA does not believe are necessary.

Several commenters requested the restoration of the sentence from the 1982 regulations implementing the 404(f) irrigation ditch exemption which stated that the exemption did not include discharges which had the effect of bringing waters of the United States into a use to which they were not previously subject or where the flow or circulation of such waters may be impaired or their reach reduced. The commenters were concerned that this deletion would widen the scope of the exemption. However, the removal of this sentence has no effect on the scope of the

exemption. The sentence was deleted from § 323.4(a)(3) simply because it duplicated § 323.4(c), which already applied a comparable limitation to all the section 404(f) exemptions, including the irrigation ditch exemption, in accordance with the requirements of section 404(f)(2).

Two commenters requested a size limitation to prevent serious fish and wildlife losses from damming of a stream to take all its water for irrigation under this exemption. EPA does not believe that such a size limitation is necessary in light of the safeguards provided by section 404(f)(2), as reflected in § 323.4(c). Furthermore, while the list of types of facilities in the revised regulations is not all-inclusive, as one commenter correctly noted, it is intended to give a general indication of the scale and nature of associated facilities which are "appurtenant and functionally related to irrigation ditches." Thus, discharges associated with major dams and diversion projects and other large-scale facilities which are not subsidiary to irrigation ditches are clearly not included in the exemption.

One commenter suggested revising the phrase "functionally related to irrigation ditches" to read "directly related to irrigational structures." We have retained the word "functionally" because EPA believes it more clearly expresses the intent of this exemption. The word "ditches" has been retained because that is the statutory language.

Several commenters suggested additional changes or clarifications to the section 404(f) regulations, particularly to the exemption for drainage ditches. EPA and Army will take those comments under consideration if changes to those provisions are proposed in the future.

##### Section 323.6(a)

In accordance with the proposal, this paragraph states that district engineers will deny permits for discharges which fail to comply with the 404(b)(1) guidelines, unless the economic impact on navigation and anchorage necessitates permit issuance pursuant to section 404(b)(2) of the Clean Water Act.

The majority of commenters supported this clarification of the role of the 404(b)(1) guidelines in the public interest review process. One commenter recommended that the provision state that compliance with the guidelines should be a prerequisite to the issuance of 404 permits and that the additional factors of the public interest review would be a separate basis for denial but could not be used to offset an unfavorable finding under the guidelines. This is, in fact, required by

the revisions to this paragraph. Although no 404 permit can be issued unless compliance with the 404(b)(1) guidelines is demonstrated (i.e., compliance is a prerequisite to issuance), the 404(b)(1) evaluation is conducted simultaneously with the public interest review set forth in 33 CFR 320.4(a). Therefore, we believe the proposed language already reflects our intent.

#### Part 325—Permit Processing

##### Section 325.3(b)

In accordance with the proposal, this paragraph clarifies the public notice procedures for any new general permit, or for the modification or reissuance of existing general permits. Public notices will contain a statement of availability of information confirming that the activities to be covered by the proposed general permit comply with general permit requirements. Existing paragraphs (b) and (c) have been renumbered (c) and (d). The majority of commenters supported adoption of this paragraph as proposed. One commenter requested that language be incorporated to require all items enumerated in § 325.3(a) (1) through (16) be included in the public notice. Some of the listed information requirements are not applicable to general permits. We believe that the adopted regulations require that all information necessary to provide a clear understanding of a proposal be included in the public notice.

##### Section 325.4

In accordance with the proposal, this section clarifies the district engineer's authority to condition permits and to identify those circumstances wherein he will deny permits if conditions which are necessary to protect the public interest cannot be reasonably implemented or enforced, or cannot otherwise be required. This section also provides that under certain conditions off-site mitigation may be required. Some commenters questioned the basis for requiring the incorporation of 401 water quality certification conditions in Corps permits. Section 401(d) of the Clean Water Act requires that such conditions become conditions of any federal permit or license. Most commenters supported these changes.

#### Part 330—Nationwide Permits

##### Section 330.4

In accordance with the proposal, the former § 330.4 has been replaced with a new section discussing public notice requirements for nationwide permits. The nationwide permits formerly found

in this section have been consolidated and placed in § 330.5(a)(26). This change was supported by most commenters. Some confusion was expressed concerning the district engineer's role in the public notice process. District engineers are required to issue public notices of the final issuance of nationwide permits by the Chief of Engineers on a local basis concurrently with publication in the *Federal Register*, including any regional conditions which have been adopted by the division engineer.

#### Section 330.5

In accordance with the proposal, the introductory text of this section and § 330.5(a) (7), (17), (21), and (23) have been modified and § 330.5(a)(26) has been added. Over 100 individual comments were received in response to the proposed changes in this section. The majority of these comments addressed the nationwide permit at paragraph (a)(26). However, many were concerned about other changes or revisions to this section. These comments are discussed below.

#### Sections 330.5(a) (7), (17), (21)

These nationwide permits have been modified to include reference to new § 330.7. Some commenters questioned how the district engineer and the resource agencies would be notified of proposed activities under these permits. The existing notification procedures required by the National Pollutant Discharge Elimination System (NPDES) program, Federal Energy Regulatory Commission (FERC) licensing process, and Title V of the Surface Mining Act respectively provide notice to the Corps and resource agencies so that their concerns, if any, can be forwarded to the district engineer for his action pursuant to the requirements of § 330.7(c)(2). Section 330.7(c)(3) requires notification to EPA and the state water quality agencies since the surface mining process does not assure this notification. An additional notification beyond these procedures is not necessary. In § 330.5(a)(17), the proposal has been changed to substitute "Federal Energy Regulatory Commission" for "Department of Energy" to more accurately identify the agency which licenses small hydropower projects.

#### Section 330.5(a)(23)

This nationwide permit has been modified to require that the Chief of Engineers solicit comments through a *Federal Register* notice on another agency's categorical exclusions prior to authorizing them under this permit. Several commenters questioned whether

previously authorized categorical exclusions could also be subjected to these provisions and, if so, the new procedure would be redundant, costly, and could result in significant delays of some projects. The categorical exclusions which have already been authorized by the Chief of Engineers are not subject to the requirements of this paragraph unless modifications or additions are proposed in the future. Federal Highway/Urban Mass Transportation Agency exclusions (23 CFR 771.115, October 30, 1980) and the U.S. Coast Guard exclusions published May 10, 1980 (45 FR 32818) are the only exclusions previously authorized. Future consideration of agency categorical exclusions for purposes of this nationwide permit will be subject to the provisions of these regulations.

#### Section 330.5(a)(26)

This nationwide permit modifies the headwaters and isolated waters permits previously found at § 330.4(a) (1) and (2). Many commenters raised questions concerning the definition of the term "loss or substantial adverse modification" and indicated that there was a need for a definition of that term. The "loss" portion of this term generally includes all discharges of dredged or fill material which result in an area no longer being a water of the U.S. The "substantial adverse modification" portion of this term does not refer to all effects on the aquatic system, but rather only to modifications that are *substantial and adverse*. Generally, a substantial adverse modification occurs when a discharge eliminates the principal valuable functions of a water of the United States (including wetlands) even though the discharge does not convert the water to dry land. The Corps will monitor the use of this term to determine if further guidance is necessary.

A number of commenters expressed concern with the acreage limitation, explaining that wetland areas and open water areas vary greatly in value; thus, the modification of a 10-acre area in some locations might not create more than minimal adverse environmental impacts, while the loss of 1 acre in another location could be very significant in terms of environmental impacts. It is for exactly these reasons that the provisions for notification and evaluation in § 330.7 were developed, and the provisions for exercising discretionary authority were provided in § 330.8. The Corps is aware of the gradations in values associated with widely differing areas and believes that the regulations being adopted by this rule provide an appropriate mechanism

to fully evaluate these areas and to assure conformance of any proposed activity with general permit criteria.

Minor word changes have been made in this paragraph to clarify the exclusion of activities from this permit. In addition, the reference to 33 CFR 323.2(a)(3) has been deleted to correct a previous error which included this reference to 1980 proposed language which was not adopted.

#### Section 330.5(c)

A significant number of commenters expressed concern about the impact of these regulations on ongoing projects and supported the inclusion of a "grandfathering" provision to prevent inequitable impacts on previously authorized projects. In adopting these regulations, we considered how to avoid retroactive applications of these regulations which would frustrate the expectations of permittees who justifiably relied on the previous permits modified and reissued herein. Yet we were also mindful of the need to achieve the goals of these regulations. We determined that an equitable transition procedure was necessary to prevent the injustice of imposing new regulatory obligations upon permittees who had adhered to and justifiably relied on the previous regulations.

In § 330.5(c), we set out the procedures to "grandfather" discharges previously authorized by the nationwide permits (§ 330.4(a) (1) and (2) of the July 22, 1982, Interim Final Regulation) modified and reissued at § 330.5(a)(26). Section 330.5(c) includes three ways discharges may continue under these previous authorizations for 18 months from the effective date of these regulations. First, the discharge may continue if it was commenced or under contract to commence by the effective date of these regulations. Second, the discharge may continue if the permittee had received written authorization by March 29, 1984, from the Corps stating the specific discharge was authorized by the previous nationwide permits modified and reissued herein at § 330.5(a)(26) and has obtained by the effective date of these regulations all federal, state or local permits or approvals required for the specific discharge to begin. Permittees discharging under the two "grandfathering" criteria above must provide documents demonstrating compliance within 60 days of the effective date of these regulations. Third, district engineers may "grandfather" other discharges not meeting the two grandfathering criteria above after determining the discharge

complies with the 404(b)(1) guidelines. To be eligible for such "grandfathering," permittees must demonstrate to the district engineer within 60 days of the effective date of these regulations, investments made toward the discharge in reliance on the previous authorization of the nationwide permits modified and reissued at § 330.5(a)(26) which cannot be modified to comply with these regulations without causing substantial loss to the permittee. The previous authorization under any of these three criteria for grandfathering discharges continues for 18 months from the effective date of these regulations. After 18 months, any new or remaining discharges must meet the terms of these regulations.

Discharges previously authorized by the nationwide permits modified and reissued at § 330.5(a)(7), (17) and (21) continue to be authorized by these permits.

#### Section 330.7

In accordance with the proposal, this new section establishes procedures to be followed by district and division engineers upon receipt of pre-discharge notifications. Many of the comments received addressed specific portions of this section and are discussed in the following paragraphs; however, a large majority of responses stated that 20 days is inadequate to carry out the required notifications, reviews, and decisions required by this section. It is not intended that a "full public interest review" type evaluation be completed during this period, but rather that activities which do not meet the criteria for coverage by the nationwide permits might be identified and the proper action taken to require individual permits, if appropriate. Twenty days has been determined to be a reasonable period in which to make this evaluation and to notify the project sponsor of the need for an individual permit or that he may proceed under the nationwide permit. However, in order to meet this time limit, coordination procedures making the maximum use of telephonic and electronic mail exchanges between the federal and state agencies and the Corps districts will be developed as necessary.

#### Section 330.7(a)(2)

Two commenters suggested that the proposed paragraph be modified to read "if notified by the district or division engineer that an individual permit will be required \* \* \* rather than \* \* \* may be required." They considered this change to be necessary to assure that decisions required by the notification procedures will be made within the

allowable 20-day period. These commenters believed that use of the word "may" would allow the Corps to notify an applicant in accordance with this paragraph that he could not proceed under the nationwide permit, but would not require the Corps to make any final decision on the need for an individual permit within the 20-day period. This interpretation is not correct. The Corps must, in all but exceptional cases, make a final decision on the need for an individual permit within the 20-day period. The Corps will notify an applicant that an individual permit may be required *only* when unusual circumstances point to the need for an individual permit yet prevent the Corps from making such a finding without a limited additional time.

#### Section 330.7(c)(1)

Some commenters were uncertain about the nature of the review process to be followed by district engineers. Upon receipt of notification for a discharge which will cause the loss or substantial adverse modification of 1 or more but less than 10 acres of waters including wetlands above the headwaters or in isolated waters, the district engineer will determine whether the activity is in a "class of discharge" or "category of waters" identified as of "particular interest" to a resource agency or otherwise would be of interest to those agencies. He will coordinate with those agencies and provide his recommendation to the division engineer.

#### Section 330.7(d)

Several commenters were concerned that division engineers are required to document any decision authorizing an activity under a nationwide permit that would be contrary to the views of resource agencies, but that division engineers are not specifically required to document a determination to require an individual permit. Division engineers will document all determinations, providing information concerning the basis for requiring individual permits, as well as the final determination. If a decision is made to require an individual application, the requirements of Parts 320 through 325 of the Corps regulations will be implemented.

#### Section 330.8

No comments were received on the proposed change. Revisions to this section have been adopted as proposed.

#### State Certification of Nationwide Permits

In our proposed rulemaking of March 29, 1984 (49 FR 12660), we restated our

earlier intention to allow all states to reconsider certification of the nationwide permits (NWP) pursuant to section 401 of the Clean Water Act. Also, states with approved coastal zone management plans were allowed to reconsider consistency determinations under the Coastal Zone Management Act. Some states have denied 401 certification and/or CZM consistency concurrence for one or more of the five NWPs being reissued today. Accordingly, authorization for any such activities is denied without prejudice in those states pursuant to 33 CFR 320.4(j)(1). Also many states granted conditional water quality certification to one or more of the NWPs and in some states final action on certification/consistency concurrence is still pending and imminent. Concurrently with the publication of those final regulations, district engineers will be issuing public notices for the five NWPs being reissued today. Notices will identify states which have denied certification/CZM consistency concurrence, states which have granted conditional water quality certification for one or more of the five NWPs, and states where certification/consistency concurrence is still pending. Applicants considering a project or activity defined by the NWPs referenced above and located in such a state are advised to check with the district engineer regarding eligibility under the NWPs. In those states which raised concerns, but have not updated their final position on certification/consistency concurrence, we will continue to use their position as taken for the NWPs adopted on July 22, 1982, until the final action has been taken on certification/consistency concurrence or waived in accordance with statutory requirements.

#### Determinations under Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Army has determined that the proposed regulation revisions do not contain a major proposal requiring the preparation of a regulatory analysis under E.O. 12291. The Department of the Army certifies, pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, that these regulations will not have a significant economic impact on a substantial number of entities.

Note 1.—The term "he" and its derivatives used in these regulations are generic and should be considered as applying to both male and female.

## List of Subjects

## 33 CFR Part 320

Environmental protection,  
Intergovernmental relations, Navigation,  
Water pollution control, Waterways.

## 33 CFR Part 323

Navigation, Water pollution control,  
Waterways.

## 33 CFR Part 325

Administrative practice and  
procedure, Intergovernmental relations,  
Environmental protection, Navigation,  
Water pollution control, Waterways.

## 33 CFR Part 330

Navigation, Water pollution control,  
Waterways.

Dated: September 10, 1984.

Robert K. Dawson,

Acting Assistant Secretary of the Army (Civil  
Works).

Accordingly, the Department of the  
Army is amending 33 CFR Parts 320, 323,  
325, and 330 as set forth below:

Authority: 33 U.S.C. 401 *et seq.*, 33 U.S.C.  
1344, 33 U.S.C. 1413.

### PART 320—GENERAL REGULATORY POLICIES

1. Section 320.4 is amended by  
revising paragraphs (a)(1), (b)(4), (c), (g)  
introductory text, (g)(1), and (j)(2) to  
read:

#### § 320.4 General policies for evaluating permit applications.

(a) *Public interest review.* (1) The  
decision whether to issue a permit will  
be based on an evaluation of the  
probable impacts, including cumulative  
impacts, of the proposed activity and its  
intended use on the public interest.  
Evaluation of the probable impacts  
which the proposed activity may have  
on the public interest requires a careful  
weighing of all those factors which  
become relevant in each particular case.  
The benefits which reasonably may be  
expected to accrue from the proposal  
must be balanced against its reasonably  
foreseeable detriments. The decision  
whether to authorize a proposal, and if  
so the conditions under which it will be  
allowed to occur, are therefore  
determined by the outcome of the  
general balancing process. That decision  
should reflect the national concern for  
both protection and utilization of  
important resources. All factors which  
may be relevant to the proposal must be  
considered including the cumulative  
effects thereof. Among those are  
conservation, economics, aesthetics,  
general environmental concerns,

wetlands, cultural values, fish and  
wildlife values, flood hazards,  
floodplain values, land use, navigation,  
shore erosion and accretion, recreation,  
water supply and conservation, water  
quality, energy needs, safety, food and  
fiber production, mineral needs,  
considerations of property ownership,  
and, in general, the needs and welfare of  
the people. For activities involving 404  
discharges, a permit will be denied if the  
discharge that would be authorized by  
such permit would not comply with the  
Environmental Protection Agency's  
404(b)(1) guidelines. Subject to the  
preceding sentence and any other  
applicable guidelines or criteria (see  
§§ 320.2 and 320.3), a permit will be  
granted unless the district engineer  
determines that it would be contrary to  
the public interest.

(b) \* \* \*

(4) No permit will be granted which  
involves the alternation of wetlands  
identified as important by paragraph  
(b)(2) of this section or because of  
provisions of paragraph (b)(3) of this  
section, unless the district engineer  
concludes, on the basis of the analysis  
required in paragraph (a) of this section,  
that the benefits of the proposed  
alteration outweigh the damage to the  
wetlands resource. In evaluating  
whether a particular discharge activity  
should be permitted, the district  
engineer shall apply the section  
404(b)(1) guidelines (40 CFR 230.10(a)  
(1), (2), (3)).

(c) *Fish and wildlife.* In accordance  
with the Fish and Wildlife Coordination  
Act (see § 320.3(e) of this part), district  
engineers will consult with the Regional  
Director, U.S. Fish and Wildlife Service,  
the Regional Director, National Marine  
Fisheries Service, and the head of the  
agency responsible for fish and wildlife  
for the state in which work is to be  
performed, with a view to the  
conservation of wildlife resources by  
prevention of their direct and indirect  
loss and damage due to the activity  
proposed in a permit application. The  
Army will give full consideration to the  
views of those agencies on fish and  
wildlife considerations in deciding on  
the issuance, denial, or conditioning of  
individual or general permits.

(g) *Consideration of property  
ownership.* Authorization of work or  
structures by the Department of the  
Army does not convey a property right,  
nor authorize any injury to property or  
invasion of other rights.

(1) An inherent aspect of property  
ownership is a right to reasonable

private use. However, this right is  
subject to the rights and interests of the  
public in the navigable and other waters  
of the United States, including the  
federal navigation servitude and federal  
regulation for environmental protection.

(j) \* \* \*

(2) The primary responsibility for  
determining zoning and land use matters  
rests with state, local, and tribal  
governments. The district engineer will  
normally accept decisions by such  
governments on those matters unless  
there are significant issues of overriding  
national importance. Such issues would  
include but are not necessarily limited  
to national security, navigation, national  
economic development, water quality,  
preservation of special aquatic areas,  
including wetlands, with significant  
interstate importance, and national  
energy needs. Whether a factor has  
overriding importance will depend on  
the degree of impact in an individual  
case.

### PART 323—PERMITS FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES

2. Section 323.4 is amended by  
revising paragraph (a)(3) to read:

#### § 323.4 Discharges not requiring permits.

(a) \* \* \*

(3) Construction or maintenance of  
farm or stock ponds or irrigation ditches,  
or the maintenance (but not  
construction) of drainage ditches.  
Discharges associated with siphons,  
pumps, headgates, wingwalls, weirs,  
diversion structures, and such other  
facilities as are appurtenant and  
functionally related to irrigation ditches  
are included in this exemption.

3. Section 323.6 is amended by  
revising paragraph (a) to read:

#### § 323.6 Special policies and procedures.

(a) The Secretary of the Army has  
delegated to the Chief of Engineers the  
authority to issue or deny section 404  
permits. The district engineer will  
review applications for permits for the  
discharge of dredged or fill material into  
waters of the United States in  
accordance with guidelines promulgated  
by the Administrator, EPA, under  
authority of section 404(b)(1) of the  
Clean Water Act (see 40 CFR Part 230).  
Subject to consideration of any  
economic impact on navigation and  
anchorage pursuant to section 404(b)(2),  
a permit will be denied if the discharge

that would be authorized by such permit would not comply with the 404(b)(1) guidelines. If the district engineer determines that the proposed discharge would comply with the 404(b)(1) guidelines, he will grant the permit unless issuance would be contrary to the public interest.

#### PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

4. Section 325.3 is amended by adding a new paragraph (b) and redesignating paragraphs (b) and (c) as (c) and (d) respectively as follows:

##### § 325.3 Public notice.

(b) *Public notice for general permits.* District engineers will publish a public notice for all proposed regional permits and for significant modifications to, or reissuance of, existing regional permits within their area of jurisdiction. Public notices for statewide regional permits may be issued jointly by the affected Corps districts. The notice will include all applicable information necessary to provide a clear understanding of the proposal. In addition, the notice will state the availability of information at the district office which reveals the Corps' provisional determination that the proposed activities comply with the requirements for issuance of general permits. District engineers will publish a public notice for nationwide permits in accordance with 33 CFR 330.4.

(c) *Evaluation factors.* \* \* \*

(d) *Distribution of public notices.*

5. Section 325.4 is revised to read:

##### § 325.4 Conditioning of permits.

(a) District engineers will add special conditions to Department of the Army permits when such conditions are necessary to satisfy legal requirements or to otherwise satisfy the public interest requirement. Permit conditions will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable.

(1) Legal requirements which may be satisfied by means of Corps permit conditions include compliance with the 404(b)(1) guidelines, the EPA ocean dumping criteria, the Endangered Species Act, and requirements imposed by conditions on state section 401 water quality certifications.

(2) Where appropriate, the district engineer may take into account the existence of controls imposed under other federal, state, or local programs

which would achieve the objective of the desired condition, or the existence of an enforceable agreement between the applicant and another party concerned with the resource in question, in determining whether a proposal complies with the 404(b)(1) guidelines, ocean dumping criteria, and other applicable statutes, and is not contrary to the public interest. In such cases, the Department of the Army permit will be conditioned to state that material changes in, or a failure to implement and enforce such program or agreement, will be grounds for modifying, suspending, or revoking the permit.

(3) Such conditions may be accomplished on-site, or may be accomplished off-site for mitigation of significant losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment.

(b) District engineers are authorized to add special conditions, exclusive of paragraph (a) of this section, at the applicant's request or to clarify the permit application.

(c) If the district engineer determines that special conditions are necessary to insure the proposal will not be contrary to the public interest, but those conditions would not be reasonably implementable or enforceable, he will deny the permit.

(d) *Bonds.* If the district engineer has reason to consider that the permittee might be prevented from completing work which is necessary to protect the public interest, he may require the permittee to post a bond of sufficient amount to indemnify the government against any loss as a result of corrective action it might take.

#### PART 330—NATIONWIDE PERMITS

6. Section 330.4 is revised to read as follows:

##### § 330.4 Public notice.

(a) *Chief of Engineers.* Upon proposed issuance of new nationwide permits, modification to, or reissuance of, existing nationwide permits, the Chief of Engineers will publish a notice in the Federal Register seeking public comments and including the opportunity for a public hearing. This notice will state the availability of information, at the Office of the Chief of Engineers and at all district offices, which reveals the Corps' provisional determination that the proposed activities comply with the requirements for issuance under general permit authority. The Chief of Engineers will prepare this information which will be supplemented, if appropriate, by division engineers.

(b) *District engineers.* Concurrent with publication in the Federal Register of new or reissued nationwide permits by the Chief of Engineers, district engineers will so notify the interested public within the district by an appropriate notice. The notice will include any applicable regional conditions adopted by the division engineer.

7. Section 330.5 is amended by revising the section heading, the introductory text of paragraph (a), paragraphs (a)(7), (a)(17), (a)(21), and (a)(23) and adding paragraphs (a)(26) and (c) as follows:

##### § 330.5 Nationwide permits.

(a) *Authorized activities.* The following activities, including discharges of dredged or fill material, are hereby permitted provided the conditions listed in paragraph (b) of this section and the notification procedures, where required, of § 330.7 are met. *Comment.* Because some states have denied water quality certification/coastal zone consistency for some nationwide permits reissued herein and many states have granted conditional water quality certification, applicants should check with the district engineer regarding eligibility under the nationwide permits.

(7) Outfall structures and associated intake structures where the effluent from that outfall has been permitted under the National Pollutant Discharge Elimination System program (section 402 of the Clean Water Act) (see 40 CFR Part 122) provided that the district or division engineer makes a determination that the individual and cumulative adverse environmental effects of the structure itself are minimal in accordance with §§ 330.7 (c)(2) and (d). Intake structures *per se* are not included—only those directly associated with an outfall structure are covered by this nationwide permit.

(17) Fills associated with small hydropower projects at existing reservoirs where the project which includes the fill is licensed by the Federal Energy Regulatory Commission under the Federal Power Act of 1920, as amended; has a total generating capacity of not more than 1500 kw (2,000 horsepower); qualifies for the short-form licensing procedures of the Federal Energy Regulatory Commission (see 18 CFR 4.61); and the district or division engineer makes a determination that the individual and cumulative adverse effects on the environment are minimal

in accordance with §§ 330.7 (c)(2) and (d).

(21) Structures, work, and discharges associated with surface coal mining activities provided they are authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977; the appropriate district engineer is given the opportunity to review the Title V permit application and all relevant Office of Surface Mining or state (as the case may be) documentation prior to any decision on that application; and the district or division engineer makes a determination that the individual and cumulative adverse effects on the environment from such structures, work, or discharges are minimal in accordance with §§ 330.7 (c)(2) and (3) and (d).

(23) Activities, work, and discharges undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another federal agency or department where that agency or department has determined, pursuant to the CEQ Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 *et seq.*), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: DAEN-CWO-N) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Prior to approval for purposes of this nationwide permit of any agency's categorical exclusions, the Chief of Engineers will solicit comments through publication in the *Federal Register*.

(26) Discharges of dredged or fill material into the waters listed in paragraphs (a)(26) (i) and (ii) of this section except those which cause the loss or substantial adverse modification of 10 acres or more of waters of the United States, including wetlands. For discharges which cause the loss or substantial adverse modification of 1 to 10 acres of such waters, including wetlands, notification of the district engineer is required in accordance with § 330.7 of this section.

(i) Non-tidal rivers, streams, and their lakes and impoundments, including

adjacent wetlands, that are located above the headwaters.

(ii) Other non-tidal waters of the United States, including adjacent wetlands, that are not part of a surface tributary system to interstate waters or navigable waters of the United States (i.e., isolated waters).

*Grandfathering.* (1) Discharges previously authorized by the nationwide permits (§ 330.4(a) (1) and (2) of the July 22, 1982, Interim Final Regulation) modified and reissued at § 330.5(a)(26) continue to be authorized by those nationwide permits for 18 months from the effective date of this regulation if:

(i) The discharge was commenced or under contract to commence by the effective date of this regulation or

(ii) The permittee had (A) By March 29, 1984, received written confirmation from the Corps stating that the Corps considered the specific discharge in question and determined it was previously authorized by the nationwide permits modified and reissued at § 330.5(a)(26) and

(B) By the effective date of this regulation, obtained all necessary pre-discharge approvals or permits required by federal, state or local laws or regulations.

(2) Permitting discharging under paragraph (c)(1) of this section must provide documents demonstrating compliance to the district engineer on or before October 5, 1984. These documents will become a part of the public record. The district engineer will notify such permittees whether they meet the criteria of paragraph (c)(1) of this section within 15 days of receipt of such documents.

(3) If a permittee cannot meet the criteria of § 330.5(c)(1), but can otherwise demonstrate to the district engineer on or before October 5, 1984, investments made toward the discharge in reliance on the previous authorizations of the nationwide permits modified and reissued at § 330.5(a)(26) which cannot be modified to comply with 33 CFR Parts 320-330 without substantial loss to the permittee, then the district engineer may allow the discharge to proceed for 18 months from the effective date of this regulation if and when he determines the discharge complies with the section 404(b)(1) guidelines.

(4) After 18 months from the effective date of this regulation, the permittee must follow 33 CFR Parts 320-330 for any new or remaining discharges.

(5) This section shall not set aside, alter, prevent or affect any past, present, or future assertion of the division engineer's authority to require an

individual permit under either § 330.7 of the July 22, 1982, Interim Final Regulation (47 FR 31794) or § 330.8 of this part.

8. Sections 330.7 and 330.8 are redesignated as §§ 330.8 and 330.9 respectively, and a new § 330.7 is added to read as follows:

#### § 330.7 Notification procedures.

(a) The general permittee shall not begin discharges requiring pre-discharge notification pursuant to the nationwide permit at § 330.5(a)(26):

(1) Until notified by the district engineer that the work may proceed under the nationwide permit with any special conditions imposed by the district or division engineer; or

(2) If notified by the district or division engineer that an individual permit may be required; or

(3) Unless 20 days have passed from receipt of the notification by the district engineer and no notice has been received from the district or division engineer.

(b) Notification pursuant to the nationwide permit at § 330.5(a)(26) must be in writing and include the information listed below. Notification is not an admission that the proposed work would result in more than minimal impacts to waters of the United States; it simply allows the district or division engineer to evaluate specific activities for compliance with general permit criteria.

(1) Name, address, and phone number of the general permittee;

(2) Location of the planned work;

(3) Brief description of the proposed work, its purpose, and the approximate size of the waters, including wetlands, which would be lost or substantially adversely modified as a result of the work; and

(4) Any specific information required by the nationwide permit and any other information that the permittee believes is appropriate.

(c) *District engineer review of notification.* Upon receipt of notification, the district engineer will promptly review the general permittee's notification to determine which of the following procedures should be followed:

(1) If the nationwide permit at § 330.5(a)(26) is involved and the district engineer determines either: (i) The proposed activity falls within a class of discharges or will occur in a category of waters which has been previously identified by the Regional Administrator, Environmental Protection Agency; the Regional Director, Fish and Wildlife Service; the Regional Director,

National Marine Fisheries Service; or the heads of the appropriate state natural resource agencies as being of particular interest to those agencies; or (ii) the particular discharge has not been previously identified but he believes it may be of importance to those agencies, he will promptly forward the notification to the division engineer and the head and appropriate staff officials of those agencies to afford those agencies an adequate opportunity before such discharge occurs to consider such notification and express their views, if any, to the district engineer concerning whether individual permits should be required.

(2) If the nationwide permits §§ 330.5(a) (7), (17), or (21) are involved and the Environmental Protection Agency, the Fish and Wildlife Service, the National Marine Fisheries Service or the appropriate state natural resource or water quality agencies forward concerns to the district engineer, he will forward those concerns to the division engineer together with a statement of the factors pertinent to a determination of the environmental effects of the proposed discharges, including those set forth in the 404(b)(1) guidelines, and his views on the specific points raised by those agencies.

(3) If the nationwide permit at § 330.5(a)(21) is involved the district engineer will give notice to the Environmental Protection Agency and

the appropriate state water quality agency. This notice will include as a minimum the information required by paragraph (b) of this section.

(d) *Division engineer review of notification.* The division engineer will review all notifications referred to him in accordance with paragraph (c)(1) or (c)(2) of this section. The division engineer will require an individual permit when he determines that an activity does not comply with the terms or conditions of a nationwide permit or does not meet the definition of a general permit (see 33 CFR 322.2(f) and 323.2(n)) including discharges under the nationwide permit at § 330.5(a)(26) which have more than minimal adverse environmental effects on the aquatic environment when viewed either cumulatively or separately. In reaching his decision, he will review factors pertinent to a determination of the environmental effects of the proposed discharge, including those set forth in the 404(b)(1) guidelines, and will give full consideration to the views, if any, of the federal and state natural resource agencies identified in paragraph (c) of this section. If the division engineer decides that an individual permit is not required, and a federal or appropriate state natural resource agency has indicated in writing that an activity may result in more than minimal adverse environmental impacts, he will prepare a written statement, available to the

public on request, which sets forth his response to the specific points raised by the commenting agency. When the division engineer reaches his decision he will notify the district engineer, who will immediately notify the general permittee of the division engineer's decision.

9. Redesignated § 330.8 is amended by revising the introductory paragraph and adding a new paragraph (d) as follows:

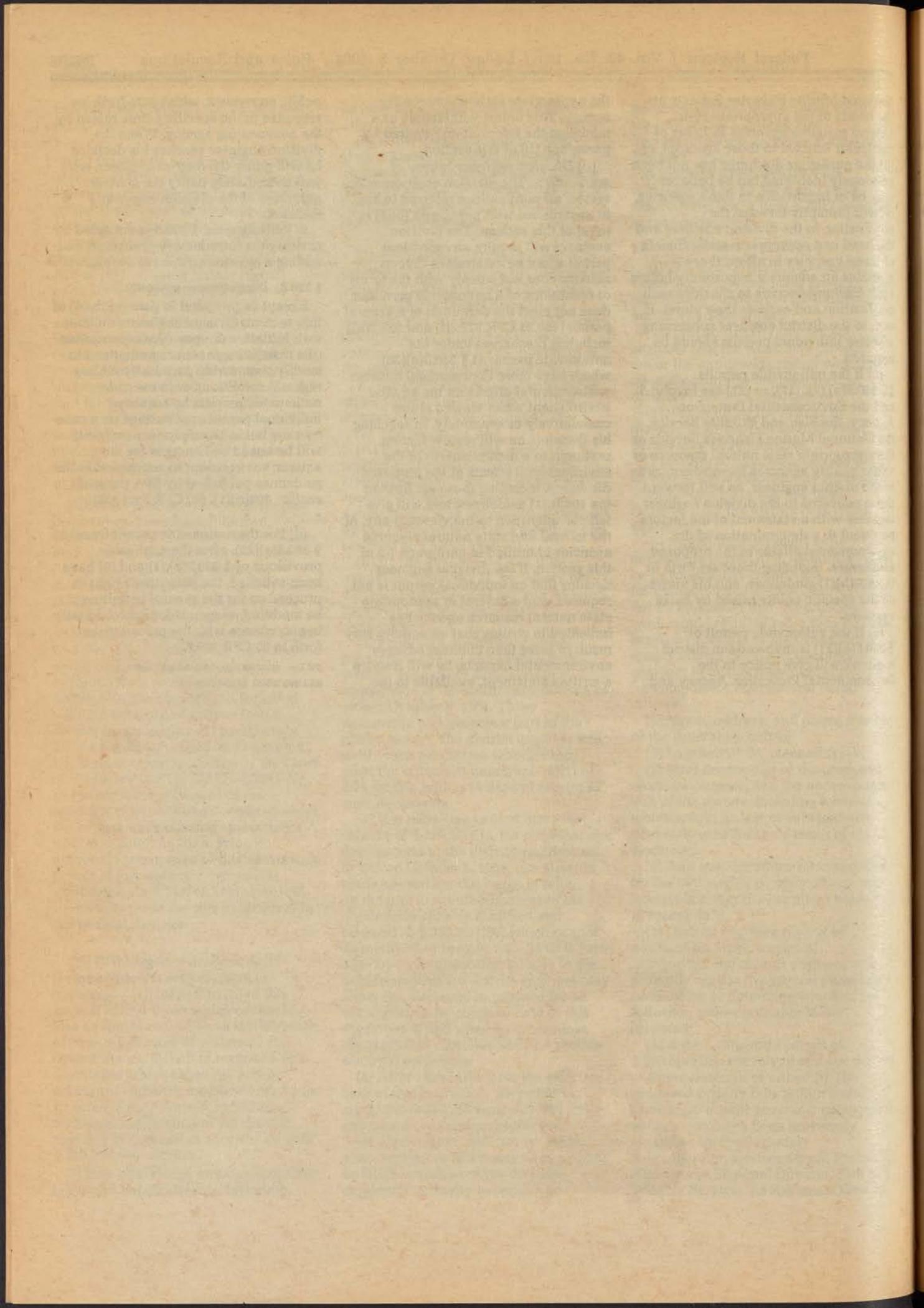
**§ 330.8 Discretionary authority.**

Except as provided in paragraph (d) of this section, division engineers on their own initiative or upon recommendation of a district engineer are authorized to modify nationwide permits by adding regional conditions or to override nationwide permits by requiring individual permit applications on a case-by-case basis. Discretionary authority will be based on concerns for the aquatic environment as expressed in the guidelines published by EPA pursuant to section 404(b)(1). (40 CFR Part 230)

\* \* \* \* \*

(d) For the nationwide permit found at § 330.5(a)(26), after the applicable provisions of § 330.7(a) (1) and (3) have been satisfied, the permittee's right to proceed under the general permit may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 325.7.

[FR Doc. 84-26554 Filed 10-4-84; 8:45 am]  
BILLING CODE 3710-92-M



**Federal Register**

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Friday  
October 5, 1984

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**Part VI**

**Department of  
Health and Human  
Services**

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Office of Child Support Enforcement  
Social Security Administration

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45 CFR Parts 205 and 305  
Child Support Enforcement Program; Aid  
to Families With Dependent Children,  
Revision of Child Support Enforcement  
Program Audit Regulations; Proposed  
Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**Office of Child Support Enforcement  
Social Security Administration**
**45 CFR Parts 205 and 305**
**Child Support Enforcement Program;  
Aid to Families With Dependent  
Children; Revision of Child Support  
Enforcement Program Audit  
Regulations**
**AGENCY:** Office of Child Support Enforcement (OCSE), and Social Security Administration (SSA), HHS.

**ACTION:** Notice of Proposed Rulemaking; Withdrawal of Proposed Rulemaking.

**SUMMARY:** These proposed rules amend Office of Family Assistance (OFA) and Office of Child Support Enforcement (OCSE) regulations at 45 CFR 205.146(d) and Part 305 to implement section 9 of Pub. L. 98-378, the Child Support Enforcement Amendments of 1984. The amendments revise 45 CFR Part 305 to: (1) Require OCSE to conduct an audit of the effectiveness of State Child Support Enforcement programs at least once every three years; (2) require OCSE to use a "substantial compliance" standard to determine whether each State has an effective IV-D child support enforcement program; (3) provide that any State found not to have an effective IV-D program in substantial compliance with the requirements of title IV-D of the Social Security Act (the Act) be given an opportunity to take the corrective action necessary to be in substantial compliance with those requirements; (4) provide for the use of a graduated penalty of not less than one nor more than five percent of a State's Federal AFDC funds if a State is not in substantial compliance with title IV-D of the Act; and (5) specify the period of time during which a penalty is effective. The amendments also revise the penalty for failure to have an effective child support enforcement program provisions at 45 CFR 205.146(d) under title IV-A (aid to families with dependent children) of the Act. Section 9 is effective on and after October 1, 1983.

These proposed regulations also amend Part 305 by adding State plan-related audit criteria and performance-related audit criteria that will be used in addition to existing criteria in determining whether a State has an effective IV-D program.

Finally, we are withdrawing the proposed rule published in the *Federal Register* on October 1, 1980 to amend the audit regulations to provide for a substantial compliance test to determine

whether a State has an effective Child Support Enforcement Program.

**DATES:** Consideration will be given to written comments received by December 4, 1984. Dates of public hearings, are set forth in Supplementary Information.

**ADDRESS:** Address comments to: Deputy Director, Office of Child Support Enforcement, Department of Health and Human Services, 10th Floor, 6110 Executive Blvd., Rockville, Maryland 20852. ATTN: Policy Branch. The comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. in Room 1010 of the Department's offices at the above address.

Addresses of public hearings are set forth in **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Michael P. Fitzgerald, Policy Branch, OCSE, (301) 443-5350.

**SUPPLEMENTARY INFORMATION:**
**Public Hearings**

To obtain the broadest public participation possible on these proposed rules, we will conduct four public hearings on the dates and at the times and locations listed in the chart below. Any individual who wishes to comment on the contents of this document at any of the hearings must register at least three days prior to the hearing with the appropriate Regional Office contact designated on the chart below. At the time of registration, we ask that prospective participants give identifying information such as name, organization, if any, address and telephone number to the Regional Office contact so that participants can be properly introduced at the hearing.

Comments must be limited to these proposed rules, their implementation, and specific recommendations for change within the constraints of the new law and the Act. Keep in mind that where the statute is explicit, the corresponding regulations will often be a reiteration of the statute. Since we have no authority to change the statute, your presentations and written comments should address only those areas where the statute provides discretion and where we have authority to change the corresponding regulations.

Presentations are limited to 10 minutes. In addition, we encourage participants to submit written comments in support of their oral presentations to the Regional Office contact at the address given in the chart below. We will also accept written comments at the hearings from any participants who would like to submit them. Written

comments from individuals not planning to participate in the hearing should be submitted to the address given above for other commenters.

To clarify presentations, we may ask questions. We cannot, however, address participants' concerns regarding these proposed regulations or respond to questions at the hearings. Instead, we will consider comments and recommendations received at the public hearings and written comments, suggestions and recommendations received at the address given above in the final version of these rules.

Date and time	Location of public hearing	Regional office contact and address
October 10, 1984; 8:30 a.m.	Dirkensen Federal Bldg., Court Room 2525, 219 South Dearborn, Chicago, Illinois 60604.	Mr. Kent Wilcox (or) Ms. Gwen Hardaway, Region V, Office of Child Support Enforcement, 10 West Jackson Blvd., 4th floor, Chicago, Illinois 60604, Phone: (312) 886-5425.
October 12, 1984; 8:30 a.m.	Dallas City Hall Council Chambers, 1500 Marilla, Dallas, Texas 75201.	Ms. Tomasia Pinter, Region VI, Office of Child Support Enforcement, Room 8-A-20, 1100 Commerce Street, Dallas, Texas 75242, Phone: (214) 767-3749.
October 15, 1984; 8:30 a.m.	Seattle Center, Mercer Street, Between 3rd & 4th Avenue North, Mercer Forum, Rooms I and II, Seattle, Washington 98121.	Mr. Vince Herberholt (or) Ms. Charlene Allen, Region X, Office of Child Support Enforcement, Third & Broad Bldg., 2901 Third Avenue, Mail Stop 415, Seattle, Washington 98121, Phone: (206) 442-0943.
October 17, 1984; 8:30 a.m.	Dept. of Health and Human Services, North Auditorium, Room 1081, 330 Independence Avenue, SW., Washington, D.C. 20201.	Ms. Catherine McAuliffe, DHHS, Office of Child Support Enforcement, Room 1010 6110 Executive Blvd., Rockville, Maryland 20852, Phone: (301) 443-1981.

If additional copies of this document are needed, please contact the National Reference Center by calling 301-443-5106 or write: National Reference Center, Office of Child Support Enforcement, 6110 Executive Boulevard, Rockville, Maryland 20852.

**Statutory Requirements**

Section 9 of Pub. L. 98-378 amends sections 402(a)(27), 403(h) and 452(a)(4) of the Act regarding the Child Support Enforcement program audit requirements. Section 402(a)(27) was amended to require a State to operate a Child Support Enforcement program in substantial compliance with the IV-D State plan. Section 452(a)(4) of the Act was amended by replacing the

requirement for an annual review of State IV-D programs with a requirement for a review at least once every three years (or not less than annually in the case of any State which is being penalized, or is operating under a corrective action plan in accordance with section 403(h)). Sections 403(h) and 452(A)(4) of the Act were amended by substituting a "substantial compliance" standard for the existing "full compliance" test used to determine whether a State has an effective IV-D program meeting the requirements of title IV-D of the Act. Section 403(h)(3) now specifies that a State which is not in full compliance with the title IV-D requirements shall be determined to be in substantial compliance with the requirements only if the Secretary determines that any noncompliance with the requirements is of a technical nature which does not adversely affect the performance of the program. Section 403(h) was further amended to provide for a corrective action period and to substitute a graduated penalty for the flat five percent reduction of a State's AFDC funds for quarter beginning after September 30, 1983. Section 403(h)(1) provides for a reduction of not less than one nor more than two percent in an initial finding, not less than two nor more than three percent if the finding is the second consecutive such finding made as a result of a review, or not less than three nor more than five percent if the finding is the third or subsequent finding made as a result of a review. Under section 403(h)(2)(A), a reduction will be suspended for a quarter if: (1) The State submits a corrective action plan within a period specified by the Secretary which contains steps necessary to achieve substantial compliance within a time period the Secretary finds appropriate; (2) the Secretary approves the plan and amendments thereto; and (3) the Secretary finds that the corrective action plan (or any amendment that is approved) is being fully implemented and the State is progressing toward substantial compliance in accordance with the timetable in the plan. Under paragraph (h)(2)(B), the penalty shall be suspended until the Secretary determines that: (1) The State has achieved substantial compliance; (2) the State is no longer implementing its corrective action plan; or (3) the State is implementing or has implemented its corrective action plan but has failed to achieve substantial compliance within the appropriate time period. Under paragraph (h)(2)(C), a penalty shall not be applied to any quarter during a suspension period if the State achieves

substantial compliance. If a state is implementing its corrective action plan but fails to achieve substantial compliance within the time period allowed, the penalty will be applied to all quarters ending after the expiration of the suspension period until the first quarter throughout which the State IV-D program is in substantial compliance. If a State is not implementing its corrective action plan, the penalty will be applied as if the suspension had not occurred.

Although these statutory changes are effective beginning October 1, 1983, these proposed regulations have varying effective dates for different provisions as discussed below.

Under the existing section 452(a)(1) of the Act, the Director, OCSE, may establish standards for locating absent parents, establishing paternity and obtaining child support and support for the spouse (or former spouse) with whom the absent parent's child is living as he determines to be necessary to assure that State programs will be effective. The performance indicators in these regulations are proposed under the authority of section 452(a)(1).

#### Withdrawal of Proposed Regulations.

On October 1, 1980, we published a proposed rule in the *Federal Register* (45 FR 69495) to amend the audit and penalty regulations to provide for a "substantial compliance" test to determine whether a State has an effective Child Support Enforcement program meeting the requirements of section 402(a)(27) of the Act. Because of the enactment of Pub. L. 98-378, we are withdrawing the proposed rule published in October, 1980 and propose instead the changes contained in this document.

#### Regulatory Provisions

##### *Frequency of Audit*

Current regulations at 45 CFR 305.10 require OCSE to conduct an annual audit of State Child Support Enforcement programs to determine whether each State has an effective IV-D program. To implement the provision of the amended section 452(a)(4) of the Act regarding the frequency of audit, the proposed regulations at § 305.10, Audit, would require OCSE to conduct an audit of State IV-D programs, at least once every three years, or at least annually in the case of any State which is being penalized to evaluate the effectiveness of the programs and determine that they meet the requirements of title IV-D of the Act.

Under this provision, OCSE has flexibility regarding the frequency of

audit during the three-year period. OCSE may conduct an audit of each State's IV-D program once every two years, continue to conduct annual audits or vary the audit frequency among States (e.g., audit some States twice a year and others every 2 years). OCSE plans to conduct an audit, at least once a year, in any State that is not meeting the performance-related criteria in effect for fiscal year 1986 and any subsequent fiscal year. Nonetheless, we will conduct an audit of each State's IV-D program at least once every three years. We will conduct an audit more frequently than on an annual basis at the request of any State that is being penalized for not meeting State plan-related criteria. States should be aware that any audit conducted in this situation may result in an increased penalty for the State if the State is not found in substantial compliance. The audit will cover a one-year or shorter period (see 45 CFR 305.11).

##### *Current Measurement of Program Effectiveness*

Current audit and penalty regulations at 45 CFR Part 305 set forth audit criteria for an effective IV-D program and provide for an annual audit and imposition of the penalty if a State is found not to have an effective program. Those regulations define an effective program as one that is in compliance with each of several specified IV-D State plan requirements. In order to be in compliance with a particular State plan requirement, the State must meet specific regulatory criteria which, for the most part, require States to have and use written procedures to carry out the requirement. Thus, if a determination is made that a State has and uses written procedures and/or meets other criteria with regard to each State plan requirement, the State will not be subject to the penalty.

OCSE has completed annual audits during the past few years. After reviewing the findings, we believe that the audits have encouraged States to establish Child Support Enforcement programs that carry out the activities described in the IV-D State plan. Nevertheless, a State may have and be using procedures for each State plan requirement and not be operating its program in an effective manner. The House of Representatives, Committee on Ways and Means, in House Report No. 98-527, page 44, indicates that the audit should focus on program effectiveness rather than on simple compliance with processes. The Senate, Committee on Finance, in Senate Report No. 98-387, page 32, indicates that the Department

should be developing performance measures which will enable OCSE auditors to determine whether States are effectively attaining each of the important objectives of the program. The Report further indicates that, based on the experience in the program to date, it should be possible to set standards which represent minimum acceptable levels of success in carrying out the various objectives of the Child Support Enforcement program. We agree that, because State IV-D programs have been in operation for nine years, sufficient time has passed to allow States to reach a degree of maturity where it is no longer necessary to focus solely on compliance with the IV-D State plan.

Having reviewed the results of the audits for the first four periods, we have concluded that the current audit regulations do not enable us to adequately measure program effectiveness. We therefore are proposing to revise 45 CFR Part 305, Audit and Penalty, as described below.

#### *Substantial Compliance Standard*

In these regulations, we propose that a State must meet both State plan-related audit criteria and performance-related audit criteria to be found to have an effective program.

To implement the provisions of the amended section 402(a)(27) of the Act regarding the use of a substantial compliance standard and section 403(h)(3) of the Act regarding the determination OCSE will make as to whether noncompliance with requirements is of a technical nature that does not adversely affect program performance, we propose to amend the regulations at § 305.20, Audit criteria.

Currently, OCSE regulations at § 305.20(a) list IV-D State plan requirements that a State must satisfy to have an effective IV-D program. To implement substantial compliance, the proposed § 305.20(a)(1) lists ten selected criteria that must be fully met in order for a State to be found to meet the corresponding IV-D State plan requirements. The proposed § 305.20(a)(2) contains nine selected criteria and specifies that the procedures required by each criterion must be used in 75 percent of the cases reviewed in order for the State to be found to meet the corresponding IV-D State plan requirements. These provisions are effective beginning with fiscal year 1984. We consider the 75 percent standard to be rigorous because prior audit findings indicate that many States were not meeting the audit criteria in 75 percent of the cases reviewed. However, we believe that the 75 percent standard is attainable by all

States and will strengthen the program by providing the States with a measure of program activity that will encourage improvement. In addition, we believe that the use of a 75 percent standard is reasonable because the audit criteria listed in § 305.20(a)(2) relate to program activities that have been IV-D State plan requirements applicable to all IV-D cases since the inception of the IV-D program in July, 1975. We welcome comment on the appropriateness of the 75 percent standard.

We are proposing at § 305.20(b) to specify additional audit criteria OCSE will use, beginning with the October 1, 1984 through September 30, 1985 audit period, to determine whether the State meets the IV-D State plan requirements contained in 45 CFR Part 302. The proposed § 305.20(b)(1) incorporates the criteria listed in § 305.20(a)(1) and lists seven additional criteria, all of which must be fully met in order for the State to be found to meet the corresponding IV-D State plan requirements. The criteria added beginning in fiscal year 1985 apply only to State plan requirements that were effective before fiscal year 1985. Thus, States were aware of these requirements prior to fiscal year 1985 and we have merely added audit criteria to measure requirements which were effective for that fiscal year.

The proposed § 305.20(b)(2) incorporates the criteria listed in § 305.20(a)(2), lists six additional criteria, and specifies that the procedures required by each criterion must be used in 75 percent of the cases reviewed. As already noted, we believe that the use of a 75 percent standard is both rigorous and reasonable because the audit criteria referred to and listed in § 305.20(b)(2) relate to case activities that have been IV-D State plan requirements since the inception of the IV-D program, or for several years.

We are proposing at § 305.20(c) to specify additional State plan-related audit criteria and new performance-related audit criteria OCSE will use for the period October 1, 1985 through September 30, 1987 to determine whether the State is in substantial compliance with the requirements of title IV-D of the Act. The proposed § 305.20(c)(1) incorporates the criteria listed in § 305.20(a)(1) and (b)(1) and lists twelve additional criteria, all of which must be fully met in order for the State to be found to meet the corresponding IV-D State plan requirements.

The proposed § 305.20(c)(2) incorporates the criteria listed in § 305.20(a)(2) and (b)(2), lists ten additional criteria, and specifies that the

procedures required by each criterion must be used in 75 percent of the cases reviewed.

The proposed § 305.20(c)(3) requires the State to meet the performance-related audit criteria prescribed in the proposed 45 CFR 305.58(c).

We are proposing at § 305.20(b) to specify State plan-related audit criteria and new performance-related audit criteria OCSE will use, for the period October 1, 1987 through September 30, 1988 and all subsequent audit periods, to determine whether the State has an effective IV-D program in substantial compliance with the requirements of title IV-D of the Act. The proposed § 305.20(d)(1) incorporates the criteria listed in § 305.20(a)(1), (b)(1) and (c)(1), all of which must be met in order for the State to be found to meet the corresponding IV-D State plan requirements. In addition, the proposed § 305.20(d)(2) incorporates the criteria listed in § 305.20(a)(2), (b)(2) and (c)(2), each of which must be met for 75 percent of the cases reviewed.

The proposed § 305.20(d)(3) requires the State to meet the audit criteria referred to in § 305.58(d) relating to the performance indicators in § 305.58(a) and (b).

The proposed § 305.20(a), (b) and (c) do not include all of the State plan-related audit criteria in 45 CFR Part 305. However, they do cover each of the IV-D State plan requirements prescribed in section 454 of the Act. The criteria addressed in § 305.20 involve IV-D functions and activities that we consider to be essential to an effective IV-D program. The criteria that were left out include having staff to perform IV-D functions covered in § 305.20, performing functions and activities that are otherwise covered by criteria in § 305.20, and performing functions and activities we do not consider to be essential to effective program performance. Nonetheless, we may at some later date, as discussed below, revise the criteria addressed in § 305.20 as a result of future audit findings.

OCSE will use only the State plan-related criteria listed or referred to in § 305.20(a), (b), (c) and (d) in determining whether a State has an effective program in substantial compliance with the requirements of title IV-D of the Act. Nonetheless, audits of State IV-D programs will cover all of the State plan-related criteria in Part 305 (i.e., §§ 305.21 through 305.36 for the period October 1, 1983 through September 30, 1984, §§ 305.21 through 305.43 for the period October 1, 1984 through September 30, 1985, and §§ 305.21 through 305.56 for all

subsequent periods.) The audit reports will include audit findings on each criterion. After reviewing future audit findings, OCSE may revise § 305.20(c) to include additional audit criteria.

Beginning with the fiscal year 1986 audit period, a State must substantially comply with both State plan-related audit criteria and performance-related audit criteria to be found to have an effective IV-D program. A failure to comply under either set of criteria may result in imposition of the penalty. (See the discussion below under the headings: "Technical Changes to 45 CFR Part 305," for details regarding the deletion of the current § 305.20(b); "Performance Indicators," for details regarding the proposed performance indicators; and "Audit Criteria Relating to Performance Indicators," for details regarding scoring based on the performance indicators.)

The effect of these revisions in the audit and penalty regulations is that a substantial compliance standard as defined in section 403(h)(3) of the Act and § 305.20 will be the basis for determining whether States have effective IV-D programs. Under this standard, the State must, beginning with the fiscal year 1984 audit period, meet selected State plan-related criteria and, beginning with the fiscal year 1986 audit period, meet both selected State plan-related and performance-related criteria to be found to have an effective IV-D program. No failure to meet these criteria may be construed as noncompliance of a technical nature. A State will be subject to the penalty if it fails to meet either the selected plan-related or performance-related audit criteria prescribed in § 305.20.

#### *Audit Criteria Relating to IV-D State Plan Requirements*

Currently, OSCE regulations at §§ 305.21 through 305.36 prescribe audit criteria for determining program effectiveness. The criteria are based on the statutory IV-D State plan requirements prescribed in section 454 of the Act at the inception of the IV-D program in July, 1975. Since then, several mandatory and optional IV-D State plan provisions, including provisions added by the Child Support Enforcement Amendments of 1984, have been added to section 454 of the Act. To measure program effectiveness under section 403(h) of the Act, OCSE must determine whether the State is in substantial compliance with the requirements of title IV-D of the Act. Therefore, we are proposing to add new §§ 305.37 through 305.43 to the audit regulations to specify additional audit criteria OCSE will use to determine

whether the State is in substantial compliance with the requirements of title IV-D of the Act as of the fiscal year 1985 audit period. We are also proposing to add new §§ 305.44 through 305.55 to the audit regulations to specify audit criteria OSCE will use to determine whether the State is in substantial compliance with the requirements of title IV-D of the Act as of the fiscal year 1986 audit period. The criteria prescribed in the proposed §§ 305.21 through 305.42, §§ 305.44 through 305.47 and §§ 305.49 through 305.54 apply to all States. However, the criteria prescribed in the proposed §§ 305.43, 305.46 and 305.55 only apply to States that have elected to implement the corresponding State plan provision. In addition, the criteria prescribed in § 305.42 only apply to States for fiscal year 1985 that elect to implement the corresponding State plan provision and will apply to all States effective October 1, 1985. Thus, OSCE will use audit criteria to determine whether a State is in compliance only with IV-D State plan requirements that apply to the State.

Finally, we issued proposed regulations in the Federal Register (48 FR 35468) on August 4, 1983 that amend the non-statutory State plan requirement at § 302.80 to specify that the IV-D agency shall perform certain medical support activities. States will be required, in order to be in compliance, to have and use written procedures which meet the requirements for medical support as published in the final regulations. Audit criteria will be effective upon publication of the final regulations. At the time that final medical support regulations are published, specific audit criteria will be published as interim final regulations.

#### *Performance Indicators*

In November, 1981, the Deputy Director, OSCE, established a task group to develop specific performance indicators to be used to evaluate State IV-D programs. During the development of these indicators, the task group reviewed the performance indicators used in several States. This review helped to identify indicators that are appropriate for evaluating all State IV-D programs. Also, contacts were made with other Federal agencies to identify systems and methodologies which could be used in conjunction with a performance indicator system; however, the agencies contacted did not run programs similar to the IV-D program. In addition, the task group solicited and received extensive input from State Child Support Enforcement agencies during the development of the performance indicators. In February,

1982, the proposed performance indicators were presented to the Executive Board of the National Council of State Support Enforcement Administrators at a meeting held in Alexandria, Virginia. In May, 1982, a revision of the proposed performance indicators were distributed to State IV-D Directors at the National Council of State Child Support Enforcement Administrators meeting held in Chevy Chase, Maryland. After that meeting, the Council conducted a survey of State IV-D Directors to determine their views on the proposed performance indicators. In July, 1982, the Executive Board of the IV-D Directors Council and OCSE representatives discussed the results of the survey at a meeting held in Kansas City, Missouri. In May, 1983, the IV-D Directors were again briefed on the proposed performance indicators at the National Council of State Child Support Enforcement Administrators meeting held in Crystal City, Virginia. Lastly, in August, 1983, the IV-D Directors were briefed at a National Reciprocal and Family Support Enforcement Association meeting in St. Louis. Several changes were made to the proposed performance indicators as a result of this meeting. The indicators proposed in this regulation are similar to those agreed to by the IV-D Directors.

In developing the seven performance indicators prescribed in the proposed § 305.58 (a) and (b), we took the following factors into consideration. First, the data necessary to use each performance indicator reflect State IV-D operations and are not overly burdensome to collect. Second performance indicators are as objective as possible at this point in time.

The House of Representatives, Committee on Appropriations, in House Report No. 97-894, page 83, indicates that the concept of child support enforcement is good social and fiscal policy; however, it (the committee) cannot indefinitely support a program with such a negative cost-benefit ratio. The Committee also indicates in House Report No. 98-357, page 93, that it remains concerned over the cost effectiveness of the Child Support Enforcement program. In addition, the House of Representatives, Committee on Ways and Means, in House Report No. 98-527, page 44, indicates that the Federal government pays 70 percent of the States' child support enforcement administrative costs and ought to be getting its money's worth in terms of firm and effective establishment and enforcement of AFDC and non-AFDC support obligations. OCSE also believes that the cost effectiveness of the IV-D

program is an important aspect of program operations. Therefore, we are proposing at § 305.58(a) (1) and (2) to prescribe two performance indicators OCSE will use to evaluate the cost effectiveness of State IV-D programs as of fiscal year 1986. These indicators are: (1) AFDC IV-D collections over total IV-D expenditures; and (2) non-AFDC IV-D collections over total IV-D expenditures. We believe that the use of these indicators will help to improve the cost effectiveness of State IV-D programs. The collection and expenditure data necessary to compute these indicators are currently submitted to the Federal government on the OCSE-34 and OCSE-41 reports. The States have been submitting these data to us since 1975. Thus, these performance indicators will not impose an additional burden on the States. In addition, the proposed performance indicators are as objective as possible at this point in time.

OCSE believes that the collection of support to reimburse assistance payments made to the family is an important aspect of the IV-D program. This is consistent with section 457 of the Act which provides for using support collections made with respect to AFDC recipients to reimburse both the State and Federal share of the current assistance payment. Therefore, we are proposing at § 305.58(a)(3) a performance indicator to evaluate the reimbursement rate of assistance payments made to those receiving AFDC for reasons other than unemployment. This indicator will be used beginning in fiscal year 1986. We believe that the use of this performance indicator will help to increase the percentage of assistance payments made to those receiving AFDC for reasons other than unemployment that are reimbursed via AFDC support collections. It should be noted that section 2640 of Pub. L. 98-369 requires the first \$50 of support collected periodically which represents monthly support payments to be paid to the AFDC family. These payments will be treated and reported as AFDC IV-D collections. The collection and assistance payments data necessary to compute this indicator are submitted to the Federal government on the OCSE-34 and the SSA-41 reports. The States have been submitting both AFDC IV-D collection and AFDC assistance payment data to the Federal government since 1975. Thus, the proposed performance indicator will not place an additional burden on the States. We believe this indicator is also as objective as possible.

One basic purpose of the Child Support Enforcement program is to reduce or avert welfare costs by increasing the collection of support from absent parents. Since the collection of support is an important aspect of the IV-D program, we believe that State collection activity should be considered in determining whether a State has an effective IV-D program. Therefore, we are proposing at § 305.58(b) to prescribe four performance indicators OCSE will use to evaluate the collection of support as of fiscal year 1988. The indicators are: (1) Ratios designating either AFDC or non-AFDC collections on support due (for a fiscal year) as the numerator and either total AFDC or non-AFDC support due (for the same fiscal year) as the denominator; and (2) ratios designating either AFDC or non-AFDC collections on support due (for prior fiscal years) as the numerator and either total AFDC or non-AFDC support due (for prior fiscal years) as the denominator. Beginning with fiscal year 1986, section 13 of Pub. L. 98-378 requires the Secretary to report to Congress for each fiscal year the data necessary to compute these indicators. Since these indicators will not be effective until the audit period beginning October 1, 1987 (fiscal year 1988) States will have sufficient time to prepare and report the necessary data (i.e., the amount of current support due during the fiscal year). We will amend the OCSE-34 report to accomplish this.

The performance indicators discussed above measure certain aspects of the IV-D program. We recognize that these indicators do not address IV-D functions such as non-AFDC avoidance and establishing paternity. We are not proposing performance indicators that address all IV-D functions at this time because many of the States cannot easily collect and maintain the data necessary to use performance indicators other than the indicators we are proposing. As State data collection systems and techniques improve and we evaluate results from research projects currently underway, we intend to propose additional performance indicators, including those measuring paternity establishment and cost avoidance. Nonetheless, we believe that the proposed performance indicators will better enable us to determine whether each State has an effective IV-D program. The proposed indicators are consistent with section 452(a)(1) of the Act which requires the Director, OCSE to establish standards to assure that State programs will be effective.

#### *Audit Criteria Relating to Performance Indicators*

In developing these proposed regulations, we considered two options regarding the use of performance indicators to evaluate State IV-D programs. In considering these options, we focused on identifying a system that would ensure that the AFDC and non-AFDC portions of the IV-D program be given equal weight. Under the first option considered, a national standard would be developed for the AFDC portion of the IV-D program and a second standard would be developed for the non-AFDC portion of the program. Under this dual standard system, States could not compensate for unacceptable performance in one portion of the IV-D program with excellent performance in the other portion of the program. Nonetheless, we have decided to use a single standard system in which AFDC and non-AFDC indicators are given equal weight rather than the dual standard system for the following reasons. First, States, in general, do not have functioning cost accounting systems to allocate costs between the AFDC and non-AFDC portions of the IV-D program. Therefore, we cannot compare collections with actual AFDC expenditures or non-AFDC collections with actual non-AFDC expenditures. Our only meaningful expenditure data are for total expenditures. Second, we believe that there would be little difference in the States at a risk under a dual standard system and under a single standard.

We propose to combine the scores on the proposed performance indicators into a single composite score for each State and use a single national standard by which to assess program performance. We propose at § 305.58(c)(1) to evaluate the ratios of the performance indicators in paragraph (a) of this section on the basis of a 100 point scoring system. The tables in § 305.58(c)(1) (i) through (iii) show the scores States will receive for different levels of performance on each performance indicator. Under this scoring system, equal weight is given to the AFDC and non-AFDC components of the IV-D program. A maximum of 50 points can be scored on the two AFDC related performance indicators in § 305.58(a) (1) and (3) (25 points for each indicator). Similarly, a maximum of 50 points can be achieved on the single non-AFDC performance indicator in § 305.58(a)(2).

The proposed regulations at § 305.58(c)(2) specify that to be found to meet the audit criteria, a State's total

score must equal or exceed 70, as illustrated by the examples in the regulation. In developing this standard, our goal was to define a minimum level of acceptable performance. We believe that achievement of a score of 70 on these three performance indicators represents the minimum level of acceptable performance at this time. However, because of the changing and evolving nature of the program, we intend to revise this scoring system for fiscal year 1988 to reflect anticipated improvements in State program performance.

We are proposing at § 305.58(d) to evaluate State performance according to the indicators in § 305.58 (a) and (b) on the basis of a scoring system we will describe and update by regulation once every two years. In fiscal year 1987, we will publish the scoring system to be used during the following two fiscal years.

Table 1 shows the results of applying this scoring system to the States for fiscal year 1983. The table indicates the level of performance achieved by the States in each of the performance indicators in § 305.58(a), the scores which would be awarded for each of the performance indicators and the total score which would be used to determine whether a State meets the audit criteria.

The table also shows the level of performance of the nation as a whole. In fiscal year 1983, the national averages were \$1.27, \$1.65 and 6.6 percent on each of the three performance indicators in § 305.58(a). This would result in individual scores of 24, 50 and 20 for a total score of 94. The table indicates that 18 States would have achieved scores of less than 70 in fiscal year 1983. These States are marked by an asterisk.

Finally, we note that a score of 70 can be achieved by levels of performance as low as \$.90, \$.90 and 4.0 percent on the three performance indicators in § 305.58(a). Thus, we feel that a score of 70 is clearly achievable.

TABLE 1

State	Indicator one	Score	Indicator two	Score	Indicator three	Score	Total score
Alabama*	0.85	18	0.09	4	10.6	25	47
Alaska	0.44	10	1.97	50	5.9	15	75
Arizona*	0.25	6	1.55	50	2.3	5	61
Arkansas	1.01	22	0.62	28	13.3	25	75
California	1.08	22	0.92	40	4.6	10	72
Colorado	1.17	22	0.98	40	9.4	25	87
Connecticut	1.73	25	1.56	50	12.7	25	100
Delaware	0.89	14	1.76	50	8.4	25	89
Washington, D.C.*	0.49	10	0.22	12	3.0	5	27
Florida*	0.66	14	0.55	24	4.3	10	48
Georgia*	1.38	24	0.25	12	6.0	20	56
Guam*	0.62	18	0.42	20	6.1	20	58
Hawaii	1.21	24	1.51	50	5.3	15	89
Idaho	1.76	25	0.41	20	17.8	25	70
Illinois*	1.16	22	0.80	36	2.3	5	63
Indiana	2.61	25	0.46	20	12.1	25	70
Iowa	3.29	25	1.64	50	13.5	25	100
Kansas	1.50	25	0.41	20	8.6	25	70
Kentucky	0.82	18	1.74	50	5.0	15	83
Louisiana	0.75	16	1.25	48	7.2	25	89
Maine	2.86	25	0.62	28	13.3	25	78
Maryland	1.70	25	3.02	50	12.4	25	100
Massachusetts	2.04	25	1.61	50	13.6	25	100
Michigan	2.36	25	4.26	50	8.6	25	100
Minnesota	1.48	25	1.11	44	10.0	25	94
Mississippi*	1.55	25	0.12	8	8.0	25	58
Missouri	1.27	24	0.73	32	6.1	20	76
Montana	1.63	25	0.52	24	7.7	25	74
Nebraska	1.12	22	4.62	50	7.3	25	97
Nevada	0.53	12	1.09	44	16.8	25	81
New Hampshire	1.21	24	4.08	50	11.2	25	99
New Jersey	1.14	22	2.83	50	8.1	25	97
New Mexico*	0.90	20	0.53	24	6.7	20	64
New York*	0.79	16	1.22	48	3.9	5	69
North Carolina	1.53	25	0.98	40	16.3	25	90
North Dakota	1.55	25	0.55	24	13.5	25	74
Ohio*	1.68	25	0.07	4	5.1	15	44
Oklahoma*	0.60	14	0.26	12	4.7	10	36
Oregon	1.15	22	2.10	50	12.6	25	97
Pennsylvania	1.10	22	5.56	50	8.4	20	92
Puerto Rico*	0.27	6	9.21	50	2.9	5	61
Rhode Island	1.97	25	1.39	48	6.3	20	93
South Carolina	2.08	25	0.50	24	7.9	25	74
South Dakota	1.81	25	0.56	24	12.4	25	74
Tennessee	0.79	16	1.92	50	6.9	20	86
Texas*	0.72	16	0.47	20	7.0	25	61
Utah*	1.75	25	0.29	12	21.6	25	62
Vermont*	2.74	25	0.21	12	7.2	25	62
Virgin Islands	0.44	10	1.70	50	4.7	10	70
Virginia*	1.53	25	0.24	12	7.0	25	62
Washington	1.56	25	0.89	36	10.1	25	86
West Virginia*	1.30	24	0.05	4	5.8	15	43
Wisconsin	1.92	25	0.80	36	8.8	25	86
Wyoming	2.12	25	0.61	28	7.1	25	78
National average	1.27	24	1.65	50	6.6	20	94

Data as reported by States as of June 1, 1984.

#### Notice and Corrective Action Period

Current regulations at 45 CFR 305.50 provide that a State is subject to an immediate five percent reduction of its

AFDC funds if, on the basis of an audit, a determination is made that the State failed to have an effective program meeting the requirements of section 402(a)(27) of the Act. Under this

requirement, the Secretary could not suspend penalties during corrective action periods or take into account subsequent improvements before imposing the penalty.

To implement the provision of the amended section 403(h)(2) of the Act regarding the corrective action period provided to the State, the proposed regulations at § 305.59, Notice and corrective action period, specify that, if a State is found by the Secretary on the basis of the results of the audit described in Part 305 not to comply substantially with the requirements of title IV-D of the Act, OCSE will notify the State in writing of such finding. The regulations further require the notice to cite the State for noncompliance, list the unmet audit criteria, apply the penalty and give the reasons for the Secretary's findings. The notice must also identify any audit criteria listed in § 305.20 (a)(2), (b)(2) or (c)(2) that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed), specify that the penalty may be suspended if the State meets the conditions specified in § 305.59(c) and specify the conditions prescribed in § 305.59(d) that result in terminating the suspension of the penalty. The proposed § 305.59(c) specifies that the penalty will be suspended for a period of time not to exceed one year from the date of notice and, beginning with the fiscal year 1986 audit period, when the State fails to meet the audit criteria relating to the performance indicators prescribed in § 305.58 the penalty will be suspended until the end of the fiscal year following the fiscal year in which a State failed to meet those criteria, if the following conditions are met: (1) The State submits a corrective action plan to the appropriate Regional Office within 60 days of the date of the notice, which contains a corrective action period not to exceed one year from the date of the notice and which contains steps necessary to achieve substantial compliance with the requirements of title IV-D of the Act; (2) the corrective action plan and any amendments are approved by the Secretary within 30 days of receipt of the plan, or approved automatically because the Secretary took no action within the 30-day period; and (3) the Secretary finds that the plan (or any amendment approved by the Secretary) is being fully implemented by the State and that the State is progressing to achieve substantial compliance with the criteria cited in the notice. The proposed § 305.58(d) specifies that the penalty will remain suspended until the Secretary determines that the State has achieved

substantial compliance, the State is no longer implementing its corrective action plan, or the State has implemented its corrective action plan but has failed to achieve or maintain substantial compliance with the criteria cited in the notice. In the event that a State fails to meet audit criteria relating to the performance indicators prescribed in § 305.58, the State must meet those criteria for the year succeeding the year in which the State failed to meet them. This is necessary because these criteria must be measured on a fiscal year basis. If the State achieves substantial compliance within the corrective action period, the State will not be subject to a reduction of its Federal AFDC funds. However, if the State is no longer implementing its corrective action plan or has implemented its corrective action plan but failed to achieve or maintain substantial compliance with the criteria cited in the notice, the State will be subject to a reduction of its Federal AFDC funds in accordance with § 305.60. For State plan-related criteria, this determination will be made as of the first full quarter after the end of the corrective action period. For performance-related criteria, this determination will be made as of the fiscal year following the fiscal year in which performance was not in substantial compliance.

The proposed § 305.59(e) specifies that a corrective action plan disapproved under § 305.59(b) is not subject to appeal. Because the Congress has given the Secretary discretion to determine whether or not to approve a corrective action plan, disapproval of a corrective action plan is not subject to appeal.

The proposed § 305.58(f) specifies that only one corrective action period is provided to a State in relation to a given criterion when consecutive findings of noncompliance are made on that criterion.

We believe that any State found to be operating a IV-D program which does not substantially comply with one or more of the requirements in the Act could, with diligent effort, develop and carry out a plan for bringing the program into substantial compliance within the specified period.

#### *Imposition of the Penalty*

Current regulations at 45 CFR 305.50 provide that if, on the basis of the audit, a determination is made that a State does not have an effective program meeting the requirements of section 402(a)(27) of the Act, the State is subject to a five percent reduction of its Federal AFDC funds. Under this provision, a State found not to have an effective IV-

D program is subject to the flat five percent penalty regardless of whether it is the first or a subsequent occasion that such determination is made.

Under the new statute, a State found not to have an effective IV-D program is subject to a penalty only if the State fails to correct cited deficiencies or falls out of compliance in a marginal area for which the State was cited.

To implement the provision of the amended section 403(h) of the Act regarding the graduated penalty, we propose to amend § 305.50, Penalty for failure to have an effective Child Support Enforcement program, by redesignating the regulation as § 305.60, revising paragraph (a), redesignating paragraphs (b) and (c) as (e) and (f) and adding new paragraphs (b), (c) and (d). Section 305.60(a) specifies that if the Secretary determines, on the basis of the results of the audit conducted under Part 305, that a State does not substantially meet the requirements in title IV-D of the Act and failed to achieve substantial compliance with such requirements within the corrective action period approved by the Secretary under § 305.59, payments to the State under title IV-A of the Act must be reduced for the period prescribed in the new § 305.60 (c) and (d) by: (1) Not less than one nor more than two percent for a period beginning in accordance with paragraph (c) or (d) of this section and not to exceed the one-year period following the end of the suspension period; (2) not less than two nor more than three percent if it is the second consecutive finding made as a result of an audit for a period beginning as of the second one-year period following the suspension period and not to exceed one year; or (3) not less than three nor more than five percent if it is the third or a subsequent consecutive finding as a result of an audit for a period beginning as of the third one-year period following the suspension period.

Under paragraph (b), the penalty will not be applied if the State achieves substantial compliance with those criteria identified in the notice within the corrective action period approved by the Secretary under § 305.59. Under paragraph (c), if the penalty suspension ends because the State is no longer implementing the corrective action plan, the penalty will be applied as if the suspension has not occurred. Under paragraph (d), if the penalty suspension ends because the State is implementing its corrective action plan but has failed to achieve substantial compliance with the criteria identified in the notice within the corrective action period approved by the Secretary under

§ 305.59, the penalty will be effective for any quarter that ends after the expiration of the suspension period until the first quarter throughout which the State IV-D program is in substantial compliance with the requirements of title IV-D of the Act.

This is illustrated by the following examples. OCSE conducts an audit of a State Child Support Enforcement program for fiscal year 1984 in the spring of 1985. After reviewing the audit findings, a determination is made that the State did not substantially comply with the requirements of title IV-D of the Act because it did not meet two of the audit criteria prescribed in § 305.20(a)(1). A notice dated July 1, 1985 is sent to the State in accordance with § 305.59. The notice indicates the criteria that resulted in the finding of noncompliance and the criteria that the State only marginally met, indicates that the penalty is in effect, specifies the conditions under which the penalty may be suspended and specifies the conditions that result in termination of suspension of the penalty. The State submits an approved corrective action plan which specifies a 10-month corrective action period (July 1, 1985 through April 30, 1986). After the corrective action period, OCSE conducts a follow-up on the initial audit to determine whether the State is now in substantial compliance with respect to the criteria identified in the notice. Based on the findings, a determination is made that the State implemented its corrective action plan but failed to achieve substantial compliance with the criteria identified in the notice during the suspension period. The State's Federal AFDC payments will be reduced by not less than one nor more than two percent of such payments from the beginning of the quarter in which the corrective action period expires (in this case, from April 1, 1986) and up to a year from the end of the corrective action period (April 30, 1987).

An audit will be conducted at least once a year in the case of a State that is being penalized. Suppose OCSE conducts a second consecutive audit in May, 1987 and a determination is made that the State has continued to fail to achieve substantial compliance during the audit period with those criteria specified in the initial notice. The State's Federal AFDC payments will be reduced between two and three percent as of May 1, 1987 for a period not to exceed one year.

Suppose OCSE conducts a third consecutive audit in May, 1988. After reviewing the audit findings, a determination is made that the State

was in substantial compliance as of August 1, 1987 with the criteria on which it is being penalized. The reduction in Federal AFDC funds will cease as of October 1, 1987. The State's Federal AFDC payments were reduced between two and three percent from May 1, 1987 until October 1, 1987.

Since the penalty would be taken against the AFDC program administered by States under title IV-A of the Act, the Social Security Administration's Office of Family Assistance would assume responsibility for making the appropriate penalty reductions. Revisions to the penalty provisions at 45 CFR 205.146(d) are proposed to implement amendments to section 403(h) of the Act.

In the second example, OCSE conducts an audit of a State Child Support Enforcement program for fiscal year 1984 in the spring of 1985. After reviewing the audit findings, a determination is made that the State did not substantially comply with the requirements of title IV-D of the Act because it did not meet two of the audit criteria listed in § 305.20(a)(1). The finding also identifies two of the audit criteria listed in § 305.20(a)(2) that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed). A notice dated July 1, 1985 is sent to the State in accordance with § 305.59. The notice lists the criteria that resulted in the finding of noncompliance and the criteria that the State marginally met, indicates that the penalty is in effect, specifies the conditions under which the penalty may be suspended, and specifies the conditions that result in termination of suspension of the penalty. The State submits an approved corrective action plan which specifies a 10-month corrective action period (July 1, 1985 through April 30, 1986). After the corrective action period, OCSE conducts a follow-up on the initial audit to determine whether the State is now in substantial compliance with respect to the criteria identified in the notice. Based on the findings, a determination is made that the State implemented its corrective action plan but is not in substantial compliance because, although it met the criteria in the notice that resulted in a finding of noncompliance, it failed to meet the criteria in the notice that it had previously met on a marginal basis. The State's Federal AFDC payments will be reduced by not less than one nor more than two percent of such payments from the beginning of the quarter in which the corrective action period expires (in this case, from April 1, 1986) and up to a

year from the end of the corrective action period (April 30, 1987).

OCSE will immediately audit the aspects of the State Child Support Enforcement program not covered by the criteria identified in the notice. Based on the findings, a determination is made that the State did not achieve substantial compliance with one of the audit criteria listed in § 305.20(b)(1). A notice dated July 1, 1986 is sent to the State in accordance with § 305.59. The notice indicates the criterion that resulted in the finding of noncompliance, indicates that the penalty is in effect, specifies the conditions under which the penalty may be suspended and specifies the conditions that result in termination of suspension of the penalty. After the corrective action period, OCSE conducts an audit to determine whether the State is now in substantial compliance with respect to the two audit criteria listed in § 305.20(a)(1) in the initial notice and the one audit criterion listed in § 305.20(b)(1) in the second notice. After reviewing the audit findings, a determination is made that the State was in substantial compliance as of November 1, 1986 with the two criteria specified in the initial notice on which it is being penalized. The reduction in Federal AFDC funds will cease as of January 1, 1987. The State's Federal AFDC payments were reduced between one and two percent from April 1, 1986 through December 31, 1986. A determination is subsequently made that the State achieved substantial compliance with respect to the one audit criterion listed in § 305.20(b)(1) in the second notice. The increased penalty due to a subsequent audit finding is not applied.

#### Application of the Proposed Regulations

For program audits for any fiscal year beginning after October 1, 1983, OCSE is proposing to: (1) Conduct an audit of the effectiveness of State Child Support Enforcement programs at least once every three years (see § 305.10); (2) use the "substantial compliance" standard specified in § 305.20 to determine whether each State has an effective IV-D program; (3) provide any State found not to have an effective program in substantial compliance with the requirements of title IV-D of the Act with a corrective action period in accordance with § 305.59; (4) provide for the use of the graduated penalty prescribed in § 305.60; and (5) specify in § 305.60 the period during which the penalty is to be imposed.

OCSE is proposing to use the new audit criteria specified in §§ 305.37 through 305.43 for program audits

beginning with the October 1, 1984 through September 30, 1985 audit period. The new audit criteria specified in §§ 305.44 through 305.56 and § 305.58(c) would be effective for fiscal years beginning after September 30, 1985. The audit criteria referred to in § 305.58(d) would be effective for fiscal years beginning after September 30, 1987. OCSE has been conducting financial and statistical system reviews in the States to determine whether State systems for recording, summarizing and reporting financial and statistical data are reliable in terms of accuracy, completeness and timeliness. Although these proposed audit regulations do not address the review of State financial and statistical systems, OCSE, as part of the audit process, will review these systems during any audit conducted for a period beginning on or after October 1, 1984 to ensure that the data used to determine whether a State meets the performance-related audit criteria are reliable. The States are using these results to take corrective action prior to October 1, 1984. OCSE will continue to apply the current audit regulations to all program audits for fiscal years beginning prior to September 30, 1984.

#### Technical Changes to 45 CFR Part 305

We propose to make the following technical changes to the audit and penalty regulations to conform with the proposed revisions discussed above. We propose to revise § 305.0, Scope, by substituting descriptions of the new § 305.10, § 305.20, §§ 305.21 through 305.56, § 305.58 and § 305.60 for the descriptions of the current § 305.10, §§ 305.20 through 305.36 and § 305.50. In addition, we added a description of the new § 305.59. We propose to amend § 305.10, Timing and scope of audit, by making reference to criteria specified in §§ 305.21 through 305.56 and § 305.58 instead of §§ 305.20 through 305.36.

We also propose to revise § 305.11, Audit period, by deleting the description of the first audit period (January 1, 1977 through September 30, 1977) and the reference to an annual audit. Since the first compliance audit has been conducted, it is no longer necessary to describe the first audit period in the regulation. In addition, we propose to revise § 305.11 to specify that any audit conducted when the State is being penalized under § 305.60 may cover a period of less than one year.

We are proposing to revise the title of § 305.20 because the current title "Audit criteria" does not reflect the content of the regulation. We believe that the title "Effective support enforcement program" better reflects the content of the regulation. Currently, OCSE

regulations at § 305.20(b) require the IV-D agency to be receiving notice from the IV-A agency pursuant to 45 CFR 235.70 and the State to be obtaining assignment of support rights in accordance with 45 CFR 232.11 in order for the State to be found to have an effective IV-D program. However, the corresponding audit criteria were deleted from 45 CFR Part 305 via final regulations published in the *Federal Register* (47 FR 24716) on June 8, 1982. Therefore, we are proposing to delete § 305.20(b).

We are proposing to amend the audit regulations at 45 CFR 305.24(b) to reflect the requirement in Pub. L. 98-378 that States have in effect laws providing for and implementing procedures for the establishment of paternity for any child at any time prior to the child's 18th birthday. We are also proposing to amend the audit regulations at 45 CFR 305.24(c) and 305.25(a)(1) to reflect the requirement in Pub. L. 98-378 that States provide support enforcement services to recipients of foster care maintenance assistance under title IV-E of the Act.

OCSE regulations at 45 CFR 305.33(f) require the States to have and use written procedures for collecting any fees required by 45 CFR 302.35(e). In final regulations published in the *Federal Register* (46 FR 54554) on November 3, 1981, OCSE moved the fee provision at 45 CFR 302.35(e) to 45 CFR 303.70(e)(2). Therefore, we are proposing to amend 45 CFR 305.33(f) to reflect this change.

45 CFR 305.12 and 305.13 are not amended by these proposed rules.

#### Paperwork Reduction Act

The performance indicators prescribed in 45 CFR 305.58 are not subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The State plan and disclosure requirements are subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1986 (Pub. L. 96-511). The collection, expenditure and assistance payment reports referred to in this document have been reviewed and approved by OMB under the following approval numbers:

1. OCSE-34 (Quarterly Report of Collections) 0960-0238.
2. OCSE-41 (Financial Status Report) 0960-0235.
3. SSA-41 (Quarterly Statement of Expenditures) 0960-0294.

The OCSE-34 will be revised to include data necessary to compute the performance indicators regarding collection activity and submitted for OMB approval in sufficient time to

allow implementation consistent with the requirements of the rule.

#### Regulatory Impact Analysis

The Secretary has determined in accordance with Executive Order 12291 that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

- An annual impact on the economy of \$100 million or more;
- A major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

These proposed regulations amend the OCSE audit regulations to: (1) Require OCSE to conduct an audit of the effectiveness of State Child Support Enforcement programs at least once every three years; (2) require OCSE to use a "substantial compliance" standard to determine whether each State has an effective IV-D program; (3) provide that any State found not to have an effective IV-D program in substantial compliance with the requirements of title IV-D of the Act be given an opportunity to take the corrective action necessary to be in substantial compliance with those requirements; (4) provide for the use of a graduated penalty of not more than five percent of a State's Federal AFDC funds; and (5) specify the period of time during which a penalty is effective. These proposed changes are a direct result of the statute.

In order to be found to have an effective program in substantial compliance with the requirements of title IV-D of the Act, a State must, beginning with the fiscal year 1984 audit period, meet audit criteria listed in § 305.20. If a State is found by the Secretary, on the basis of the results of an audit, not to comply substantially with the requirements of title IV-D of the Act, OCSE will notify the State that the penalty may be suspended for a period of time not to exceed one year from the date of the notice, to allow the State to take corrective action. If a State fails to take the corrective action necessary to achieve substantial compliance during the period prescribed in the notice, Federal AFDC funds to the State will be reduced in an amount not to exceed five percent until the first quarter throughout which the State IV-D program is found to substantially

comply with the requirements of title IV-D of the Act.

The proposed regulations may save some States funds they otherwise might have lost because a "substantial compliance" standard and corrective action period are used rather than the "full compliance" standard in determining whether a State meets the IV-D State plan requirements currently addressed in the audit regulations. However, the penalty under prior law was never assessed. Nonetheless, the new regulations may cost the State money because they are more workable and enforceable than the current regulations. Audit results will depend on State performance. If State performance improves in response to this audit system, States (as well as the Federal government) would save money due to increased collections and decreased administrative costs. We therefore have no basis for projecting either net costs or savings to States.

These regulations also propose performance indicators for evaluating State IV-D programs and new audit criteria related to the performance indicators that together will be used to assess State program effectiveness. The seven performance indicators we are proposing are designed to show: (1) The cost effectiveness of a State IV-D program; (2) the amount of IV-A assistance payments reimbursed by IV-D collections; and (3) the amount of support collected on the amount of support due for a fiscal year and the period prior to a fiscal year. The three indicators that will enable us to determine the cost effectiveness of State IV-D programs and the reimbursement rate for payments made to AFDC recipients will be effective as of the fiscal year 1986 audit period. The four performance indicators that will enable us to evaluate State collection activity will be effective as of the fiscal year 1988 audit period. To determine whether a State meets the performance-related criteria, its performance will be compared to the standards described earlier.

Finally, these regulations propose audit criteria based on IV-D State plan requirements, including criteria based on the Child Support Enforcement Amendments of 1984, not currently addressed in the audit regulations that will be used to assess State program effectiveness. These criteria are similar to the criteria in the current regulations for other State plan requirements. The criteria prescribed in §§ 305.37 through 305.43 will be effective as of the fiscal year 1985 audit period. The criteria prescribed in §§ 305.44 through 305.56

will be effective as of the fiscal year 1986 audit period.

Under these proposed regulations, a State must have an effective program in substantial compliance with the IV-D State plan requirements as measured by the audit criteria in § 305.20 in effect for the audit period and new performance indicators to avoid a reduction of its Federal AFDC funds. We cannot estimate the number of States that may avoid losing AFDC funds because a "substantial compliance" standard and corrective action period were used rather than the "full compliance" standard in determining whether a State meets the current IV-D State plan requirements. In addition, we cannot estimate the number of States that may lose AFDC funds because they failed to meet the new State plan-related audit criteria and performance-related audit criteria.

Beginning with the fiscal year 1988 audit period, we will compare 1988 State performance to a new national standard in determining whether a State meets the performance-related criteria. Again, we do not have data sufficient to allow us to estimate the number of States that could lose AFDC funds because they failed to meet the new national standard.

These proposed regulations could result in minor increases in Federal and State administrative costs. The States will not be required to perform any new program functions. Thus, additional Federal/State costs of conducting audits will be limited to the area of documenting State performance using criteria based on new IV-D State plan requirements and performance indicators for evaluating program effectiveness.

The Secretary certifies, under 5 U.S.C. 605(b) as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that these regulations will not result in a significant impact on a substantial number of small entities because they primarily affect Federal and State governments.

#### List of Subjects

##### 45 CFR Part 205

Administrative practice and procedure, Aid to families with dependent children, Family assistance office, Grant programs/social programs, Public assistance programs, Reporting requirements.

##### 45 CFR Part 305

Child welfare, Grant programs/social programs, Accounting.

For the reasons discussed above, 45 CFR 205.146 is proposed to be amended as follows:

#### PART 205—[AMENDED]

Section 205.146 is amended by revising paragraphs (d)(1) and (2), and by adding a new paragraph (d)(3) to read as follows:

##### § 205.146 [Amended]

(d) *Penalty for failure to have an effective child support enforcement program*—(1) *General*. Pursuant to section 403(h) of the Act, notwithstanding any other provision of this chapter, total payments to a State under title IV-A of the Act for any quarters in any fiscal year, shall be reduced if a State is found by the Secretary to have failed to have an effective child support enforcement program in substantial compliance with the requirements of section 402(a)(27), as implemented by Parts 302 and 305 of this title. The reduction for any quarter (calculated without regard to any other reduction under this section) shall be: (i) Not less than one nor more than two percent of such payments for a period beginning in accordance with § 305.60 (c) or (d) of this title not to exceed the one-year period following the end of the suspension period specified in the notice required by § 305.59 of this title; (ii) Not less than two nor more than three percent of such payments if the finding is the second consecutive finding made as a result of an audit for a period beginning as of the second one-year period following the suspension period specified in the notice required by § 305.59 of this title not to exceed one year; or (iii) Not less than three nor more than five percent of such payments if the finding is the third or subsequent consecutive finding as a result of an audit for a period beginning as of the third one-year period following the suspension period specified in the notice required by § 305.59 of this title.

(2) *Application of penalty*. (i) The penalty will be imposed for any quarter beginning after September 30, 1983.

(ii) The penalty will be imposed on the basis of the results of the audit conducted pursuant to Part 305 of this title.

(3) *Notice, suspension, corrective action period*. Notice, suspension and corrective action provisions are set forth at 45 CFR 305.59.

45 CFR Part 305 is proposed to be amended as follows:

1. The table of contents is revised to read as follows:

## PART 305—AUDIT AND PENALTY

- Sec.
- 305.0 Scope.
- 305.1 Definitions.
- 305.10 Timing and scope of audit.
- 305.11 Audit period.
- 305.12 State comments.
- 305.13 State cooperation in the audit.
- 305.20 Effective support enforcement program.
- 305.21 Statewide operation.
- 305.22 State financial participation.
- 305.23 Single and separate organizational unit.
- 305.24 Establishing paternity.
- 305.25 Support obligations.
- 305.26 Enforcement of support obligation.
- 305.27 Support payments to the IV-D agency.
- 305.28 Distribution of support payment.
- 305.29 Payments to the family.
- 305.31 Individuals not otherwise eligible.
- 305.32 Cooperation with other States.
- 305.33 State parent locator service.
- 305.34 Cooperative arrangements.
- 305.35 Reports and maintenance of records.
- 305.36 Fiscal policies and accountability.
- 305.37 Bonding of employees.
- 305.38 Separation of cash handling and accounting functions.
- 305.39 Withholding of unemployment compensation.
- 305.40 Federal tax refund offset.
- 305.41 Recovery of direct payments.
- 305.42 Spousal support.
- 305.43 90 percent Federal financial participation for computerized support enforcement systems.
- 305.44 Publicizing the availability of support enforcement services.
- 305.45 Notice of collection of assigned support.
- 305.46 Incentive payments to States and political subdivisions.
- 305.47 Guidelines for setting child support awards.
- 305.48 Payment of support through the IV-D agency or other entity.
- 305.49 Wage or income withholding.
- 305.50 Expedited processes.
- 305.51 Collection of overdue support by State income tax refund offset.
- 305.52 Imposition of liens against real and personal property.
- 305.53 Posting security, bond or guarantee to secure payment of overdue support.
- 305.54 Making information available to consumer reporting agencies. Imposition of late payment fees on absent parents who owe overdue support.
- 305.56 Medical support.
- 305.58 Performance indicators and audit criteria.
- 305.59 Notice and corrective action period.
- 305.60 Penalty for failure to have an effective support enforcement program.

Authority: Secs. 403(h), 404(d), 452(a) (1) and (4), and 1102 of the Social Security Act; 42 U.S.C. 603(h), 604(d), 652(a) (1) and (4), and 1302.

2. Section 305.0 is revised to read as follows:

## § 305.0 Scope.

This part implements the requirements in sections 452(a)(4) and 403(h) of the Act for an audit, at least once every three years, of the effectiveness of State Child Support Enforcement programs under title IV-D and for a possible reduction in Federal reimbursement for a State title IV-A program pursuant to sections 403(h) and 404(d) of the Act. Sections 305.10 through 305.13 describe the audit. Section 305.20 defines an effective program for the purposes of this part. Sections 305.21 through 305.56 and § 305.58 establish audit criteria the Office will use to determine program effectiveness. Section 305.58 also establishes performance indicators the Office will use to determine State IV-D program effectiveness. Section 305.59 provides for the issuance of a notice and corrective action period if a State is found by the Secretary not to have had an effective IV-D program. Section 305.60 provides for the imposition of a penalty if a State is found by the Secretary not to have had an effective program and fails to take corrective action and achieve substantial compliance within the period prescribed by the Secretary.

3. Sections 305.10 and 305.11 are revised to read as follows:

## § 305.10 Timing and scope of audit.

(a) The Office will conduct an audit in accordance with sections 452(a)(4) and 403(h) of the Act, at least once every three years, to evaluate the effectiveness of each State's program in carrying out the purposes of title IV-D of the Act and to determine that the program meets the title IV-D requirements. The audit of each State's program will be a comprehensive review using the criteria prescribed in §§ 305.21 through 305.56 and § 305.58 of this part.

(b) The Office will conduct an annual comprehensive audit in the case of a State that is being penalized. For a State operating under a corrective action plan, the review at the end of the corrective action period will cover only the criteria specified in the notice of non-compliance as prescribed in § 305.59 of this part.

(c) During the course of the audit, the Office will:

(1) Make a critical investigation of the State's IV-D program through inspection, inquiries, observation, and confirmation; and

(2) Use the audit standards promulgated by the Comptroller General of the United States in the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

## § 305.11 Audit period.

The audit will cover the period October 1 through September 30 of each fiscal year audited and, when the State is operating under a corrective action plan, will cover the first full quarter after the corrective action period. The audit may cover a shorter period at State request when the State is being penalized under § 305.60 of this part.

4. Section 305.20 is revised to read as follows:

## § 305.20 Effective support enforcement program.

For the purposes of this part and section 403(h) of the Act, in order to be found to have an effective program in substantial compliance with the requirements of title IV-D of the Act, a State must meet the IV-D State plan requirements contained in Part 302 of this chapter measured as follows:

(a) For the fiscal year 1984 audit period:

(1) The following audit criteria must be met:

- Statewide operation. (45 CFR 305.21(d))
- State financial participation. (45 CFR 305.22 (a) and (b))
- Single and separate organizational unit. (45 CFR 305.23 (a) and (b))
- Establishing paternity. (45 CFR 305.24(b))
- Enforcement of support obligation. (45 CFR 305.26 (c) and (d))
- Distribution of child support payment. (45 CFR 305.28(a))
- State parent locator service. (45 CFR 305.33(e))
- Cooperative arrangements. (45 CFR 305.34(a))
- Reports and maintenance of records. (45 CFR 305.35 (a) and (b))
- Fiscal policies and accountability. (45 CFR 305.36(a))

(2) The procedures required by the following audit criteria must be used in 75 percent of the cases reviewed for each criterion:

- Establishing paternity. (45 CFR 305.24(c))
- Support obligations. (45 CFR 305.25 (a) and (b))
- Enforcement of support obligation. (45 CFR 305.26 (a), (b) and (e))
- Support payments to the IV-D agency. (45 CFR 305.27 (a), (b) and (d))
- Distribution of support payment. (45 CFR 305.28(b))
- Payments to the family. (45 CFR 305.29)
- Individuals not otherwise eligible. (45 CFR 305.31 (a), (b) and (c))
- Cooperation with other States. (45 CFR 305.32 (a), (b), (c), (d), (e), (f), and (g))
- State parent locator service. (45 CFR 305.33 (a) and (g))

(b) Beginning with the fiscal year 1985 audit period:

(1) The criteria prescribed in paragraph (a)(1) of this section and the following audit criteria must be met:

Bonding of employees. (45 CFR 305.37(a))  
 Separation of cash handling and accounting functions. (45 CFR 305.38(a))  
 Withholding of unemployment compensation. (45 CFR 305.39 (a) through (h))  
 Federal tax refund offset. (45 CFR 305.40(a))  
 Recovery of direct payments. (45 CFR 305.41(a))  
 Spousal support. (45 CFR 305.42(a))  
 90 percent Federal financial participation for computerized support enforcement systems. (45 CFR 305.43)

(2) The procedures required by the criteria prescribed in paragraph (a)(2) of this section and the following audit criteria must be used in 75 percent of the cases reviewed for each criterion:

Bonding of employees. (45 CFR 305.37(c))  
 Separation of cash handling and accounting functions. (45 CFR 305.38(c))  
 Withholding of unemployment compensation. (45 CFR 305.39(i))  
 Federal tax refund offset. (45 CFR 305.40(b))  
 Recovery of direct payments. (45 CFR 305.41(b))  
 Spousal support. (45 CFR 305.42(b))

(c) For the fiscal year 1986 and 1987 audit periods:

(1) The criteria prescribed in paragraphs (a)(1) and (b)(1) of this section and the following criteria must be met:

Publicizing the availability of support enforcement services. (45 CFR 305.44)  
 Notice of collection of assigned support. (45 CFR 305.45(a))  
 Incentive payments to States and political subdivisions. (45 CFR 305.46(a))  
 Guidelines for setting child support awards. (45 CFR 305.47)  
 Payment of support through the IV-D agency or other entity. (45 CFR 305.48 (a) and (b))  
 Wage or income withholding. (45 CFR 305.49(a))  
 Expedited processes. (45 CFR 305.50(a))  
 Collection of overdue support by State income tax refund offset. (45 CFR 305.51(a))  
 Imposition of liens against real and personal property. (45 CFR 305.52(a))  
 Post security, bond or guarantee to secure payment of overdue support. (45 CFR 305.53(a))  
 Making information available to consumer reporting agencies. (45 CFR 305.54(a))  
 Imposition of late payment fees on absent parents who owe overdue support. (45 CFR 305.55(a))  
 Medical support. (To be determined)

(2) The procedures required by the criteria prescribed in paragraphs (a)(2) and (b)(2) of this section and the following audit criteria must be used in 75 percent of the cases reviewed for each criterion:

Notice of collection of assigned support. (45 CFR 305.45(b))  
 Incentive payments to State and political subdivisions. (45 CFR 305.46(b))  
 Payment of support through IV-D agency or other entity. (45 CFR 305.48(c))  
 Wage or income withholding. (45 CFR 305.49(b))

Expedited processes. (45 CFR 305.50(b))  
 Collection of overdue support by State income tax refund offset. (45 CFR 305.51(b))  
 Imposition of liens against real and personal property. (45 CFR 305.52(b))  
 Posting security, bond or guarantee to secure payment of overdue support. (45 CFR 305.53(b))  
 Making information available to consumer reporting agencies. (45 CFR 305.54(b))  
 Imposition of late payment fees on absent parents who owe overdue support. (45 CFR 305.55(b))  
 Medical support. (To be determined)

(3) The criteria prescribed in § 305.58(c) of this part relating to the performance indicators prescribed in paragraph (a) of that section must be met.

(d) For fiscal year 1988 and future audit periods:

(1) The criteria prescribed in paragraphs (a)(1), (b)(1) and (c)(1) of this section must be met.

(2) The procedures required by the criteria prescribed in paragraph (a)(2), (b)(2) and (c)(2) of this section must be used in 75 percent of the cases reviewed for each criterion.

(3) The criteria referred to in § 305.58(d) of this part relating to the performance indicators prescribed in paragraphs (a) and (b) of that section must be met.

5. Section 305.24 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 305.24 Establishing paternity.**

(b) Have established and use written procedures for establishing the paternity of any child at any time prior to the child's 18th birthday;

(1) By court order or other legal process established by State law; and  
 (2) By acknowledgment, if under State law such acknowledgment has the same legal effect as court ordered paternity including the rights to benefits other than child support.

(c) Be utilizing such written procedures to establish the paternity of any child born out of wedlock whose paternity has not previously been established and with respect to whom there is an assignment pursuant to § 232.11 of this title or section 471(a)(17) of the Act in effect or with respect to whom there is an application for child support services pursuant to § 302.33 of this chapter;

6. Section 305.25 is amended by revising paragraph (a)(1) to read as follows:

**§ 305.25 Support obligations.**

(a) \* \* \*

(1) With respect to whom there is an assignment pursuant to § 232.11 of this title or section 471(a)(17) of the Act in effect or with respect to whom there is an application for child support services pursuant to § 302.33 of this chapter.

**§ 305.28 [Amended]**

7. Section 305.28 is amended by inserting a comma and the reference "302.52" after the reference "302.51" wherever it appears in that section.

**§ 305.33 [Amended]**

8. 45 CFR 305.33 is amended by removing the citation "\$ 302.35(e)" where it appears in paragraph (f) and inserting in its place the citation "\$ 303.70(e)(2)."

9. Sections 305.37 through 305.56 are added to read as follows:

**§ 305.37 Bonding of employees.**

For the purposes of this part, to be found in compliance with the State plan requirement for bonding of employees (45 CFR 302.19), a State must:

(a) Have written procedures to ensure that every person, including the individuals prescribed in § 302.19(b) of this chapter, who as a regular part of his or her employment, receives, disburses, handles or has access to or control over funds collected under the Child Support Enforcement program is covered by a bond against loss resulting from employee dishonesty;

(b) Have written procedures for obtaining a bond in an amount which the State IV-D agency deems adequate to indemnify the State IV-D program for loss resulting from employee dishonesty; and

(c) Use the written procedures specified above.

**§ 305.38 Separation of cash handling and accounting functions.**

(a) For the purposes of this part, to be found in compliance with the State plan requirement for the separation of cash handling and accounting functions (45 CFR 302.20), a State must have written administrative procedures:

(1) Designed to assure that persons, including the individuals specified in § 302.20(b) of this chapter, responsible for handling cash receipts of support do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of support receipts; and

(2) Designed to assure use of generally accepted accounting principles.

(b) The requirements prescribed in paragraph (a) of this section do not

apply to sparsely geographic areas within the State granted a waiver under § 302.20(c) of this chapter by the Regional Office.

(c) The State must use the written procedures specified above.

**§ 305.39 Withholding of unemployment compensation.**

For the purposes of this part, to be found in compliance with the State plan requirement for the withholding of unemployment compensation (45 CFR 302.65), a State must:

(a) Have negotiated a cost effective cooperative agreement with the State Employment Security Agency (SESA) that provides for:

(1) Exchange of information;  
(2) The withholding of unemployment compensation benefits to satisfy unmet support obligations;

(3) Payment of withheld unemployment compensation by the SESA to the IV-D agency; and

(4) Reimbursement of administrative costs of the SESA by the IV-D agency.

(b) Have written procedures to determine, based on information provided by the SESA, whether individuals who apply for or receive unemployment compensation owe support obligations that are being enforced by the IV-D agency;

(c) Have written procedures for arranging for the withholding of unemployment compensation:

(1) Pursuant to a voluntary agreement with the individual who owes support; or

(2) Pursuant to legal process under State or local law;

(d) Have written criteria for selecting cases to pursue by the withholding of unemployment compensation process for the collection of past-due support;

(e) Have written procedures for providing a receipt at least annually to an individual who requests a receipt for the support paid by the withholding of unemployment compensation, if receipts are not provided through other means;

(f) Have written procedures for maintaining direct contact with the SESA in its State as prescribed in § 302.65(c)(5) of this chapter;

(g) Have written procedures for the reimbursement of the administrative costs incurred by the SESA that are actual, incremental costs attributable to the process of withholding of unemployment compensation for support purposes insofar as these costs have been agreed upon by the SESA and the IV-D agency;

(h) Have written procedures to review and document, at least annually, the State withholding of unemployment compensation program, including the

case selection criteria and costs of the withholding process versus the amounts collected and, as necessary, modify the procedures and renegotiate the services provided by the SESA to improve program and cost effectiveness;

(i) Use the written procedures specified above; and

(j) Have personnel performing the activities described above.

**§ 305.40 Federal tax refund offset.**

For the purposes of this part, to be found in compliance with the State plan requirement for Federal tax refund offset (45 CFR 302.60), a State must:

(a) Have written procedures to obtain payment of past-due support from Federal tax refunds in accordance with section 464 of the Act, § 303.72 of this chapter and regulations of the Internal Revenue Service at 26 CFR 301.6402-5;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

**§ 305.41 Recovery of direct payments.**

For the purposes of this part, to be found in compliance with the State plan requirement for recovery of direct payments (45 CFR 302.31(a)), a State must:

(a) Have written procedures to:  
(1) Notify the IV-A agency whenever a determination is made that directly received payments have been retained, if the State elects the IV-A recovery method; or

(2) Recover retained direct support payments in accordance with the standards in § 303.80 of this chapter if the State elects the IV-D recovery method.

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

**§ 305.42 Spousal support.**

For the purposes of this part, to be found in compliance with the State plan provision for the collection of spousal support (45 CFR 302.31(a)), a State must:

(a) Have written procedures for the collection of spousal support from a legally liable person when:

(1) A support order has been established for the purpose;  
(2) The spouse or former spouse is living with the child(ren) for whom the individual is liable for child support; and  
(3) The support order established for the child(ren) is being enforced under the IV-D plan.

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

**§ 305.43 90 percent Federal financial participation for computerized support enforcement systems.**

For the purposes of this part, to be found in compliance with the State plan requirement for the establishment of a computerized support enforcement system eligible for 90 percent Federal financial participation (45 CFR 302.85), a State's system must be:

(a) Planned, designed, developed, installed, or enhanced in accordance with an initial and annually updated advance planning document approved under § 303.65 of this chapter; and

(b) Planned, designed developed, installed, or enhanced to control, account for, and monitor all the factors in the support collection and paternity determination processes under the State plan including the factors prescribed in § 302.85(c)(2) of this chapter.

**§ 305.44 Publicizing the availability of support enforcement services.**

For the purposes of this part, to be found in compliance with the State plan requirement for publicizing the availability of support enforcement services (45 CFR 302.30), a State must publicize regularly and frequently the availability of support enforcement services under the State plan through public service announcements that include:

(a) Information on any application fees imposed for such services; and

(b) A telephone number or postal address where further information may be obtained.

**§ 305.45 Notice of collection of assigned support.**

For the purposes of this part, to be found in compliance with the State plan requirement for providing notice of collection of assigned support (45 CFR 302.54), a State must:

(a) Have written procedures for:  
(1) Sending, at least annually, a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title; and

(2) Listing separately in the notice support payments collected from each absent parent when more than one absent parent owes support to the family;

(3) Indicating in the notice the amount of support collected which was paid to the family;

(b) Use the written procedures specified above.

(c) Have personnel performing the functions specified above.

**§ 305.46 Incentive payments to States and political subdivisions.**

For the purposes of this part, to be found in compliance with the State plan requirement for incentive payments to States and political subdivisions (45 CFR 303.52), the State must:

- (a) Have written procedures:
  - (1) To require that, if one or more political subdivisions of the State participate in the costs of carrying out the activities under the State plan during any period, each such subdivision shall be paid an appropriate share of any incentive payments made to the State for such period, as determined by the State in accordance with § 303.52(d) of this chapter, and
  - (2) To consider the efficiency and effectiveness of the political subdivision in carrying out the activities under the State plan in determining the amount of the incentive payments made to the political subdivision.
- (b) Use the written procedures specified above.
- (c) Have personnel performing the functions specified above.

**§ 305.47 Guidelines for setting child support awards.**

For the purposes of this part, to be found in compliance with the State plan requirement for guidelines for setting child support awards (45 CFR 302.56), a State must:

- (a) Establish guidelines by law or by judicial or administrative action for setting child support award amounts within the State;
- (b) Have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts, but the guidelines need not be binding on those persons; and
- (c) Include a copy of the guidelines in its State plan.

**§ 305.48 Payment of support through the IV-D agency or other entity.**

For purposes of this part, to be found in compliance with the optional State plan provision for payment of support through the IV-D agency or other entity (45 CFR 302.57), a State must:

- (a) Have written procedures for the payment of support through the State IV-D agency or entity designated to administer the State's withholding system upon request of either the absent parent or custodial parent, regardless of whether or not arrearages exist or withholding procedures have been instituted;
- (b) Have written procedures to:
  - (1) Monitor all amounts paid and dates of payments and record them on an individual IV-D payment record;

(2) Ensure prompt payment to the custodial parent when appropriate; and

(3) Require the requesting parent to pay a fee for the cost of providing the service not to exceed \$25 annually and not to exceed State costs;

(c) Use the written procedures specified above; and

(d) Have personnel performing the functions specified above.

**§ 305.49 Wage or income withholding.**

For the purposes of the part, to be found in compliance with the State plan requirement for wage or income withholding (45 CFR 302.70(a)(1)), a State must:

(a) Have written procedures for carrying out a program of withholding in accordance with § 303.100 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

**§ 305.50 Expedited processes.**

For the purposes of this part, to be found in compliance with the State plan requirement for expedited process (45 CFR 302.70(a)(2)), a State must:

(a) Have written expedited procedures to establish and enforce child support obligations having the same force and effect as those established through full judicial process in accordance with § 303.101 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

**§ 305.51 Collection of overdue support by State income tax refund offset.**

For the purposes of this part, to be found in compliance with the State plan requirement for collection of overdue support by State income tax refund offset (45 CFR 302.70(a)(3)), a State must:

(a) Have written procedures for obtaining overdue support from State income tax refunds on behalf of recipients of aid under the State's title IV-A or IV-E plan with respect to whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective, and on behalf of individuals who apply for services under § 302.33 of this part, in accordance with § 303.102 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

**§ 305.52 Imposition of liens against real and personal property.**

For the purposes of this part, to be found in compliance with the State plan

requirement for the imposition of liens against real and personal property (45 CFR 302.70(a)(4)), a State must:

(a) Have written procedures for the imposition of liens against the real and personal property of absent parents who owe overdue support in accordance with § 303.103 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

**§ 305.53 Posting security, bond or guarantee to secure payment of overdue support.**

For the purposes of this part, to be found in compliance with the State plan requirement for posting security, bond or guarantee to secure payment of overdue support (45 CFR 302.70(a)(6)), a State must:

(a) Have written procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of support in accordance with § 303.104 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

**§ 305.54 Making information available to consumer reporting agencies.**

For the purposes of this part, to be found in compliance with the State plan requirement for making information available to consumer reporting agencies (45 CFR 302.70(a)(7)), a State must:

(a) Have written procedures for making information regarding the amount of overdue support owed by an absent parent available to consumer reporting agencies in accordance with § 303.105 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

**§ 305.55 Imposition of late payment fees on absent parents who owe overdue support.**

For the purposes of this part, to be found in compliance with the optional State plan requirement for imposing late payment fees on absent parents who owe overdue support (45 CFR 302.75), a State must:

(a) Have written procedures for uniformly applying the late payment fee in accordance with § 302.75 of this chapter;

(b) Use the written procedures specified above; and

(c) Have personnel performing the functions specified above.

**§ 305.56 Medical support.**

For the purposes of this part, to be found in compliance with the State plan requirement for medical support, a State must meet requirements that will be published as final regulations on medical support effective upon publication of the requirements.

10. Section 305.58 is added to read as follows:

**§ 305.58 Performance indicators and audit criteria.**

(a) Beginning with this fiscal year 1986 audit period, the Office will use the following performance indicators in determining whether each State has an effective IV-D program.

**(1) AFDC IV-D collections**

Total IV-D expenditures;

**(2) Non-AFDC IV-D collections**

Total IV-D expenditures; and

**(3) AFDC IV-D collections**

IV-A assistance payments

(Less payments to unemployed parents).

(b) Beginning with the fiscal year 1988 audit period, the Office will use the performance indicators prescribed in paragraph (a) of this section and the following performance indicators in determining whether each State has an effective IV-D program.

**(1) AFDC IV-D collections on support due (for a fiscal year)**

Total AFDC support due (for the same fiscal year)

**(2) Non-AFDC IV-D collections on support due (for a fiscal year)**

Total non-AFDC support due (for the same fiscal year)

**(3) AFDC IV-D collections on support due (for prior fiscal year)**

Total AFDC support due (for the same fiscal years)

**(4) Non-AFDC IV-D collections on support due (for prior fiscal years)**

Total Non-AFDC support due (for prior fiscal years)

(c) The Office shall use the following procedures and audit criteria to measure State performance in fiscal years 1986 and 1987.

(1) The ratio for each of the performance indicators in paragraph (a) of this section will be evaluated on the basis of the scores in the tables in paragraphs (c)(1) (i) through (iii) of this section. The tables show the scores the States will receive for different levels of performance.

(i) Dollar of AFDC IV-D collections per dollar of total IV-D expenditures.

Level of performance	Score
\$0.10 to \$0.19	4
\$0.20 to \$0.29	6
\$0.30 to \$0.39	8
\$0.40 to \$0.49	10
\$0.50 to \$0.59	12
\$0.60 to \$0.69	14
\$0.70 to \$0.79	16
\$0.80 to \$0.89	18
\$0.90 to \$0.99	20
\$1.00 to \$1.19	22
\$1.20 to \$1.39	24
\$1.40 or more	25

(ii) Dollar of non-AFDC IV-D collections per dollar of total IV-D expenditures.

Level of performance	Score
\$0.00	0
\$0.01 to \$0.09	4
\$0.10 to \$0.19	8
\$0.20 to \$0.29	12
\$0.30 to \$0.39	16
\$0.40 to \$0.49	20
\$0.50 to \$0.59	24
\$0.60 to \$0.69	28
\$0.70 to \$0.79	32
\$0.80 to \$0.89	36
\$0.90 to \$0.99	40
\$1.00 to \$1.19	44
\$1.20 to \$1.39	48
\$1.40 or more	50

(iii) AFDC IV-D collections divided by IV-A assistance payments (less payments to unemployed parents).

Level of performance (in percent)	Score
0 to 1.9	0
2 to 3.9	5
4 to 4.9	10
5 to 5.9	15
6 to 6.9	20
7 or more	25

(2) To be found to meet the audit criteria, a State's total score must equal or exceed 70.

*Example.* A State achieves levels of performance of \$1.22, \$1.35 and 6.5 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 24, 48 and 20 on these performance indicators. The State would be found to meet the audit criteria because the total score is 92.

A State achieves levels of performance of \$.65, \$.65 and 2.5 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 14, 28 and 5 on these performance indicators. The State would be found not to meet the audit criteria because the total score is 47.

A State achieves levels of performance of \$.92, \$.96 and 4.2 percent on the performance indicators in paragraph (a) of this section. The State would receive individual scores of 20, 40 and 10 on these performance indicators. The State would be found to meet the audit criteria because the total score is 70.

Level of performance	Score
\$0.00 to \$0.0	
\$0.01 to \$0.09	2

(d) Beginning in fiscal year 1988, the Office shall evaluate State performance according to the indicators in paragraphs (a) and (b) of this section on the basis of a scoring system that will be described and updated in regulation once every two years beginning in fiscal year 1987.

11. Section 305.59 is added to read as follows:

**§ 305.59 Notice and corrective action period.**

(a) If a State is found by the Secretary on the basis of the results of the audit described in this part not to comply substantially with the requirements of title IV-D of the Act, as implemented by Chapter III of this title, the Office will notify the State in writing of such finding.

(b) The notice will:

(1) Cite the State for noncompliance, list the unmet audit criteria, apply a penalty and give the reasons for the Secretary's finding;

(2) Identify any audit criteria listed in § 305.20 (a)(2), (b)(2) or (c)(2) of this part that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed);

(3) Specify that the penalty may be suspended if the State meets the conditions specified in paragraph (c) of this section; and

(4) Specify the conditions that result in terminating the suspension of the penalty as specified in paragraph (d) of this section.

(c) The penalty will be suspended for a period not to exceed one year from the date of the notice and, beginning with the fiscal year 1986 audit period, when a State fails to meet audit criteria relating to the performance indicators prescribed in § 305.58 of this part the penalty will be suspended until the end of the fiscal year following the fiscal year in which a State failed to meet those criteria if the following conditions are met:

(1) Within 60 days of the date of the notice, the State submits a corrective action plan to the appropriate Regional Office which contains a corrective action period not to exceed one year from the date of the notice and which contains steps necessary to achieve substantial compliance with the requirements of title IV-D of the Act;

(2) The corrective action plan and any amendment are:

(i) Approved by the Secretary within 30 days of receipt of the corrective action plan; or

(ii) Approved automatically because the Secretary took no action within the period specified in paragraph (b)(2)(ii)(A) of this section; and

(3) The Secretary finds that the corrective action plan (or any amendment to it approved by the Secretary) is being fully implemented by the State and that the State is progressing to achieve substantial compliance with the criteria cited in the notice.

(d) The suspension of the penalty will continue until such time as the Secretary determines that:

(1) The State has achieved substantial compliance with the criteria cited in the notice;

(2) The State is not implementing its corrective action plan; or

(3) The State has implemented its corrective action plan but has failed to achieve or maintain substantial compliance with the criteria cited in the notice. For State plan-related criteria, this determination will be made as of the first full quarter after corrective action period. For performance-related criteria this determination will be made as of the fiscal year following the fiscal year in which performance was not in substantial compliance.

(e) A corrective action plan disapproved under paragraph (c) of this section is not subject to appeal.

(f) Only one corrective action period is provided to a State in relation to a given criterion when consecutive findings of noncompliance are made on that criterion.

12. Section 305.50 is redesignated as § 305.6 and revised to read as follows:

**§ 305.60 Penalty for failure to have an effective support enforcement program.**

(a) If the Secretary finds, on the basis of the results of the audit described in this part, that a State's program does not

substantially meet the requirements in title IV-D of the Act, as implemented by Chapter III of this title, and the State does not achieve substantial compliance with those requirements identified in the notice within the corrective action period approved by the Secretary under § 305.59(c) of this part and maintain compliance in areas cited in the notice as marginally acceptable under § 305.59(b)(2) of this part, total payments to the State under title IV-A of the Act will be reduced for the period prescribed in paragraph (c) or (d) of this section by:

(1) Not less than one nor more than two percent of such payments for a period beginning in accordance with paragraph (c) or (d) of this section not to exceed the one-year period following the end of the suspension period;

(2) Not less than two nor more than three percent of such payments if the finding is the second consecutive finding made as a result of an audit for a period beginning as of the second one-year period following the suspension period not to exceed one year; or

(3) Not less than three nor more than five percent of such payments if the finding is the third or subsequent consecutive finding as a result of an audit for a period beginning as of the third one-year period following the suspension period.

(b) In the case of a State that has achieved substantial compliance with the criteria identified in the notice within the corrective action period approved by the Secretary under § 305.59 of this part, the penalty will not be applied.

(c) In the case of a State whose penalty suspension ends because the State is not implementing its corrective

action plan, the penalty will be applied as if the suspension had not occurred.

(d) In the case of a State whose penalty suspension ends because the State is implementing its corrective action plan but has failed to achieve substantial compliance with the criteria identified in the notice within the corrective action period approved by the Secretary under § 305.59 of this part, the penalty will be effective for any quarter that ends after the expiration of the suspension period until the first quarter throughout which the State IV-D program is in substantial compliance with the requirements of title IV-D of the Act.

(e) Any reduction required to be made under this section shall be made pursuant to § 205.146(d) of this title.

(f) The reconsideration of penalty imposition provided for by § 205.146(e) of this title shall be applicable to any reduction made pursuant to this section.

(Sec.1102 of the Social Security Act (42 U.S.C. 1302) and secs. 403(h) and 452(a) (1) and (4) of the Social Security Act (42 U.S.C. 603(h) and 652(a) (1) and (4))

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program.)

Dated: September 15, 1984.

**Martha A. McSteen**

*Acting Director, Office of Child Support Enforcement, Acting Commissioner of Social Security.*

Approved: October 3, 1984.

**Margaret M. Heckler,**

*Secretary.*

[FR Doc. 84-26570 Filed 10-4-84; 8:45 am]

**BILLING CODE 4190-11-M**

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Federal Register

Vol. 49, No. 195

Friday, October 5, 1984

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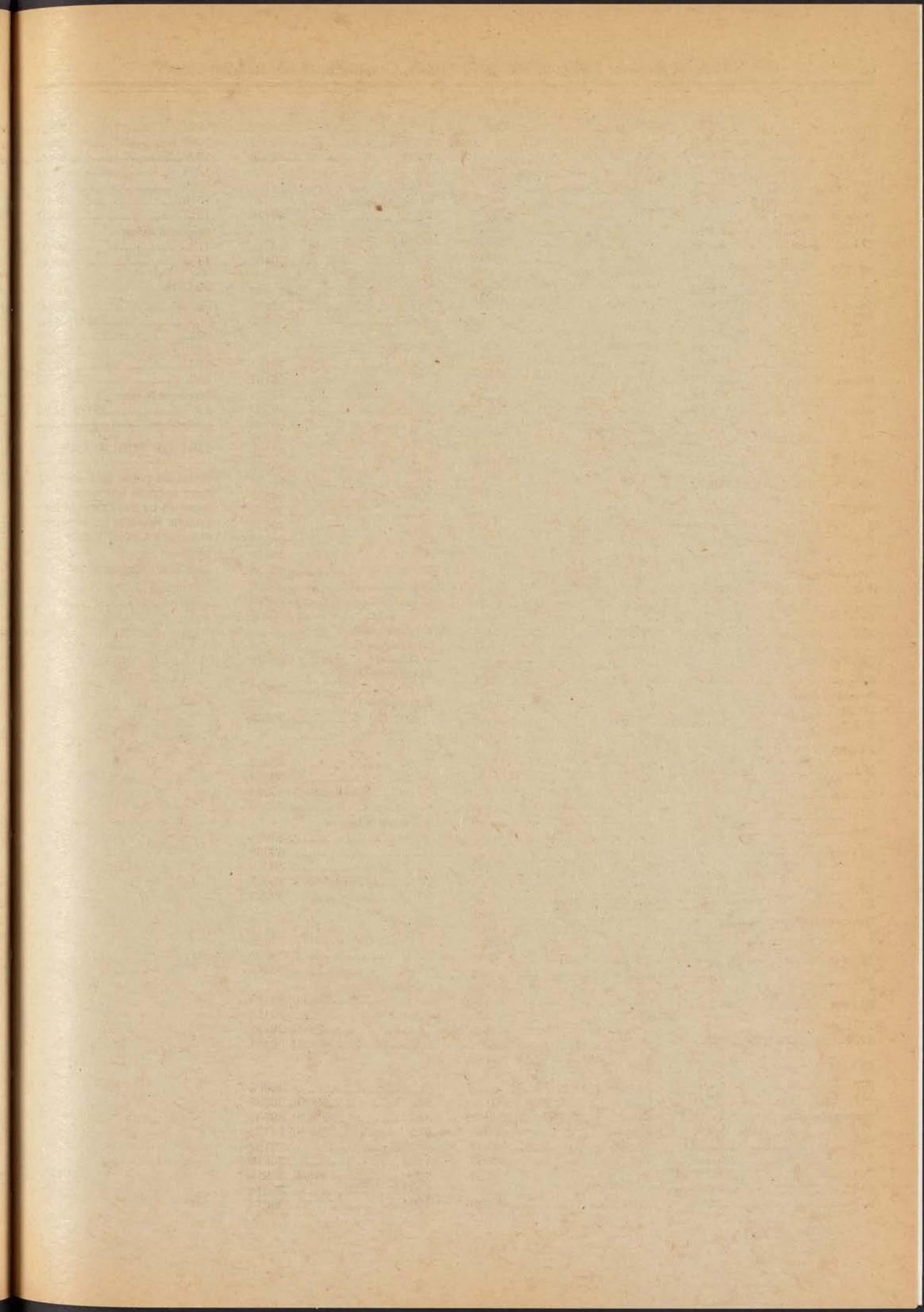
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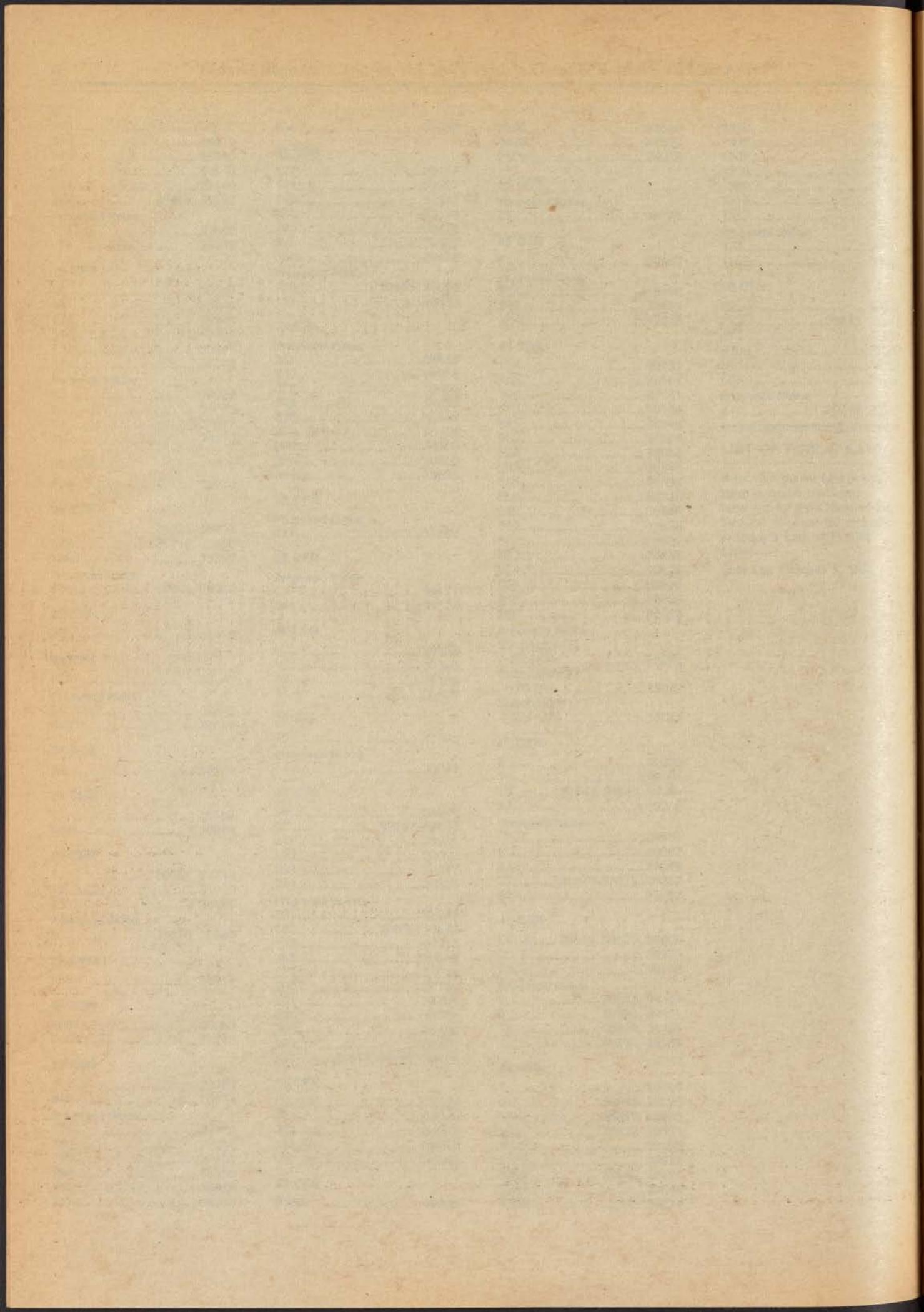
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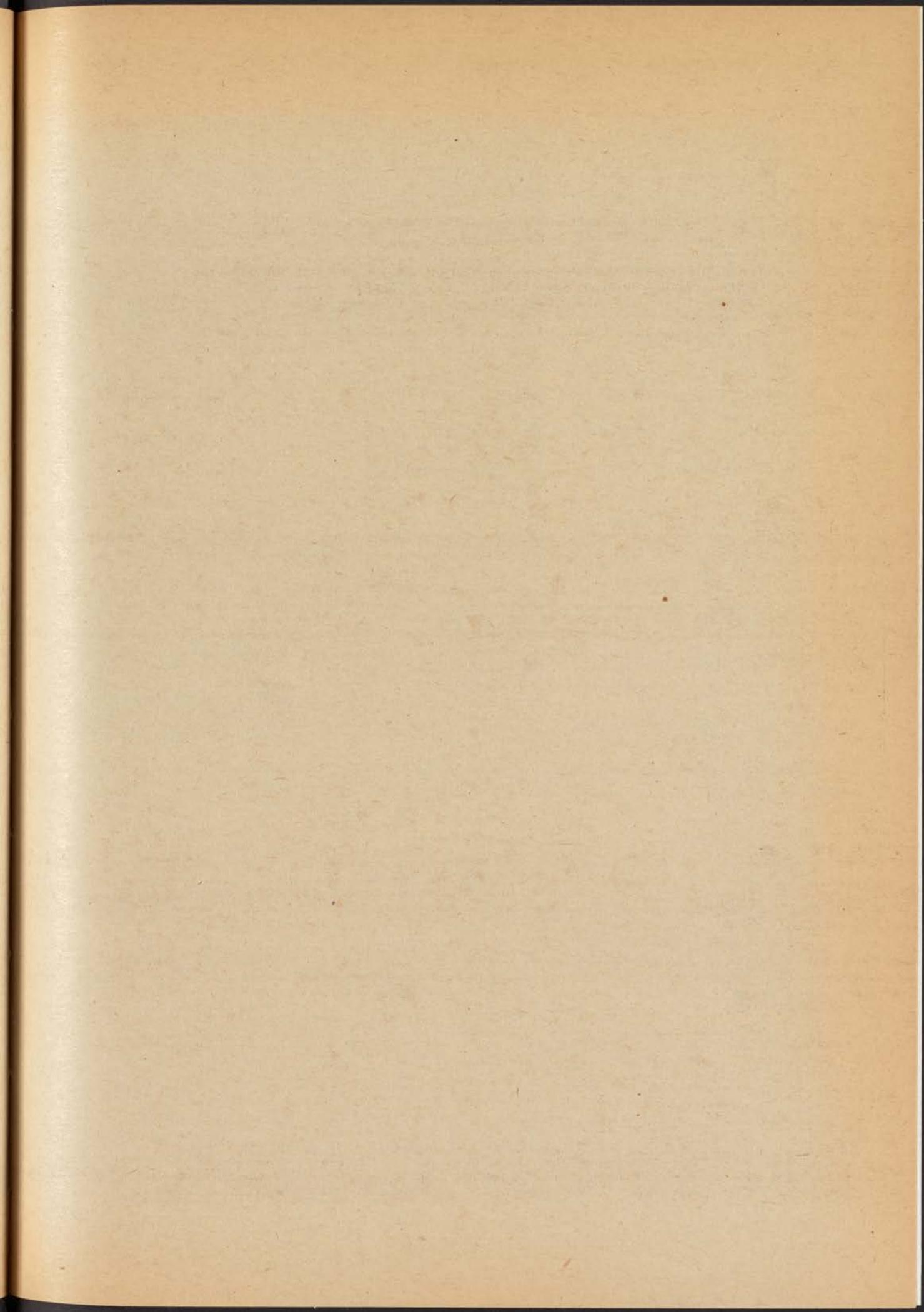
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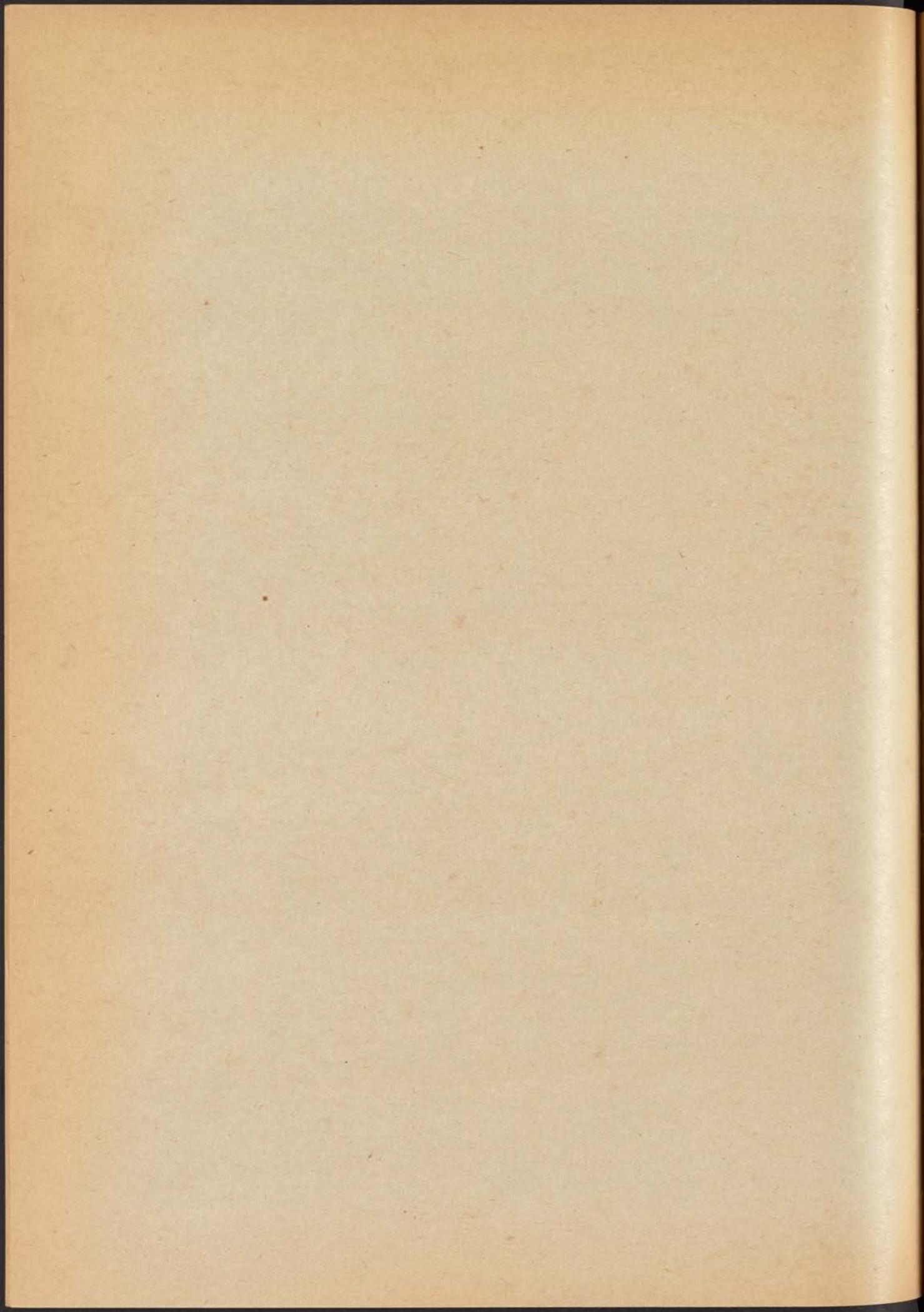
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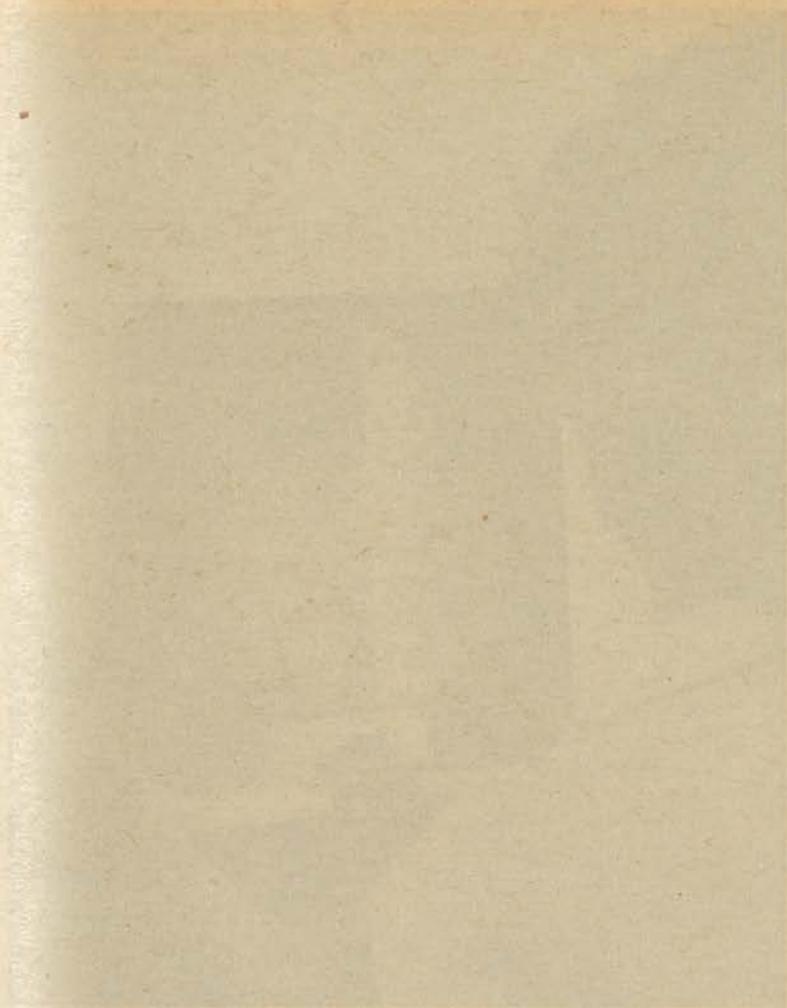
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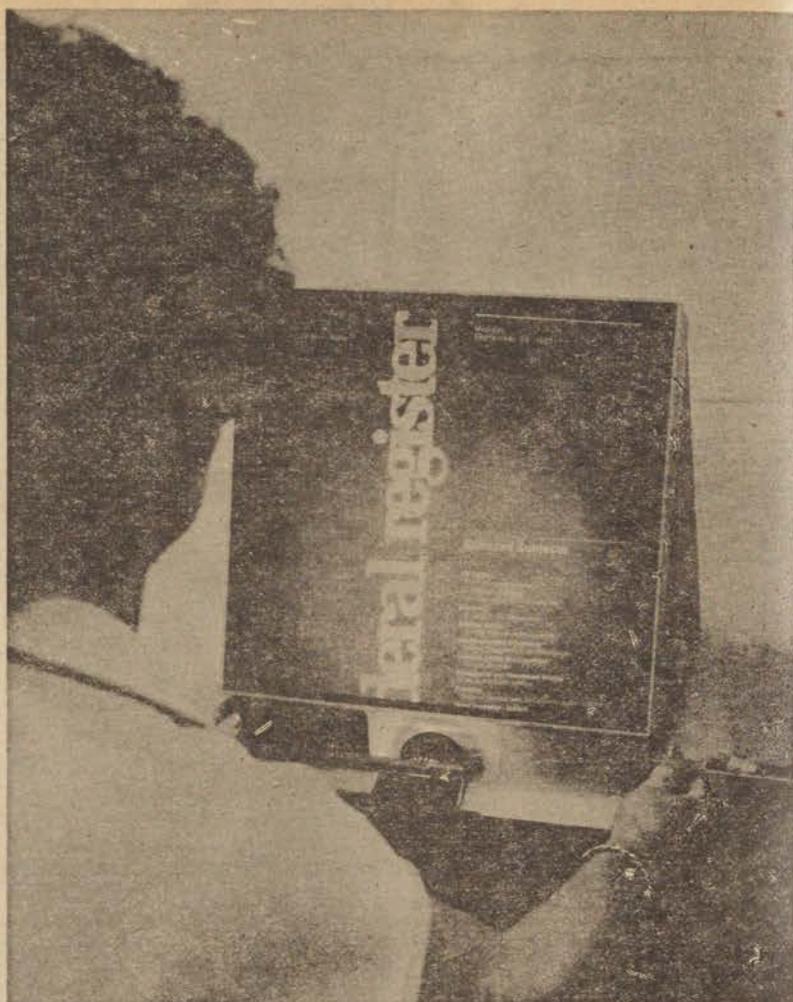
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