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Pages 45107-45408

Federal Register

Thursday
November 15, 1984

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Environmental Protection Agency

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Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Employee Benefit Plans
Pension Benefit Guaranty Corporation

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Marketing Agreements
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Mortgage Insurance
Housing and Urban Development Department

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

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Presidential Documents

Title 3—

The President

Proclamation 5278 of November 13, 1984

Women in Agriculture Week, 1984

By the President of the United States of America

A Proclamation

Women have always played an equal role with men in the agriculture of the Nation. Early America was an agricultural society, and colonial women worked beside men to develop the new land. Together, they learned local agriculture from the Indians, erected log cabins, and cleared farmland. Pushing their clearings to the foothills of the Alleghenies, they passed through the mountain gaps and crossed the prairies together in covered wagons.

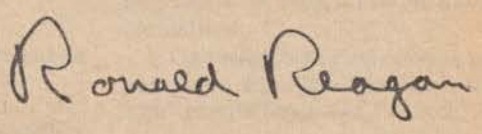
Women were partners in American life from the founding of our first settlements. Men and women together in family enterprises began to process food, weave fabrics, and market food and fiber. As the settlements became towns and then cities, and as agricultural jobs became more specialized, women remained partners in the maturing of the agriculture of our Nation.

Today, agriculture employs 22 million people who work with food and fiber in growing, harvesting, processing, transporting, and retailing. Women are active in farm management, finances, and community life and in establishing agricultural policy. They are also active in all phases of agribusiness and in agricultural processing and marketing. It is appropriate, therefore, that we set aside a week to recognize the role of women in this most basic of all industries.

The Congress, by House Joint Resolution 554, has designated the week of November 11 through 17, 1984, as "Women in Agriculture Week" and 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 of November 11 through 17, 1984, as Women in Agriculture Week. I call on all Americans to participate in appropriate events to pay tribute to women in agriculture whose talents, hard work, and dedication significantly contribute to the production and marketing of the Nation's food supplies.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of November, 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.



[FR Doc. 84-30201
Filed 11-14-84; 11:03 am]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220, 225, and 226

Child Nutrition Labeling Program; Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a citation contained in final regulations on the Child Nutrition Labeling Program that appeared on page 18458 in the Federal Register of Tuesday, May 1, 1984 (49 FR 85, page 18453). The action is necessary to correct a typographical error.

FOR FURTHER INFORMATION CONTRACT: Cynthia H. Ford, (703) 756–3556.

The following correction is made in FR Doc. 84–11052: On page 18458, column three, the closing citation is corrected to read "(National School Lunch Act Sections 9, 13, 17; 42 U.S.C. 1758, 1761, 1766, 7 CFR 210.10, 220.8, 225.21, 226.20)".

October 26, 1984.

Robert E. Leard,

Administrator.

[FR Doc. 84–29952 Filed 11–14–84; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 488, Amdt. 2]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action increases the quantity of fresh California-Arizona lemons that may be shipped to the fresh market to 255,000 cartons during the period November 4–10, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: Effective for the period November 4–10, 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 Service Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met by telephone on November 8, 1984, to consider the current and prospective conditions of supply and demand and recommended an increase in the quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is improving.

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 amendment is based and the effective date necessary to effectuate the declared policy of the act. This amendment relieves restrictions on the handling of lemons. 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

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.788 Lemon Regulation 488 is revised to read as follows:

§ 910.788 Lemon Regulation 488.

The quantity of lemons grown in California and Arizona which may be handled during the period November 4, 1984, through November 10, 1984, is established at 255,000 cartons.

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

Dated: November 9, 1984.

Thomas R. Clark,

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

[FR Doc. 84–30009 Filed 11–14–84; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1446

General Regulations Governing 1982 Through 1985 Crops; Peanut Warehouse Storage Loans and Handler Operations (Amendment 2)

Correction

In FR Doc. 84–25457 beginning on page 37729 in the issue of Wednesday, September 26, 1984, make the following corrections:

1. On page 37730, first column, second paragraph, third line from the bottom, "1 inch" should have read "¾ inch".

§ 1446.58 [Corrected]

2. On page 37731, in § 1446.58(d)(4)(ii), second column, in the entry for "Runner type", second line, "$^{15}/_{64}$" should have read "$^{16}/_{64}$".

BILLING CODE 1505–01–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 84-100]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis. Prior to the effective date of this document, the following six Counties in Montana were included in the portion of Montana designated as Class A: Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders. This document amends the regulations to include the six listed Counties in the portion of Montana designated as Class Free. This action is necessary because it has been determined that these Counties together with the previously designated Class Free area of Montana meet the standards for Class Free status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from certain Counties in Montana.

DATES: Effective Date: November 15, 1984. Written comments must be received on or before January 14, 1985.

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

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Class Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing progam for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

The State of Montana is divided into a Class Free Area and a Class A Area. Prior to the effective date of this document, the Area of Montana designated as Class A included the Counties of Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders. All other counties in Montana were included in the Area designated as Class Free. The State of Montana has requested that the boundary line separating the Class Free and Class A Counties be changed to include Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties within the Class Free Area.

To attain and maintain Class Free status, a State or Area must, among other things, remain free from brucellosis in cattle for the preceding 12 month period and the adjusted MCI reactor prevalence rate for such 12 month period must not exceed one reactor per 2,000 cattle tested (0.050 percent). The listed counties were included in the portion of Montana designated as Class A rather than as Class Free because of the herd infection rate. A review of brucellosis program records establishes that the portion of Montana encompassing Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties meets the criteria for classification as Class Free. Therefore, it is necessary to include these counties in the portion of Montana designated as Class Free.

With this change, the portion of Montana designated as Class Free consists of all Counties in Montana other than Flathead County. Flathead County remains designated as Class A.

Emergency Action

Dr. John K. Atwell, Deputy Administrator, VS, APHIS, USDA, has determined that an emergency situation exists that warrants publication without prior opportunity for a public comment period. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from an area in Montana.

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

Executive Order 12291 and Regulatory Flexibility Act

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

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

Changing the status of a portion of the State of Montana reduces testing

requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the changes in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by these changes in status. It has been determined that the changes in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine, Transportation, Brucellosis.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended by revising paragraphs (a) and (b) of § 78.20 to read as follows:

§ 78.20 State/area classifications.

(a) *Class Free.* Alaska; Connecticut; Delaware; Hawaii; Maine; Maryland; Massachusetts; Michigan; Montana (All Counties except Flathead County); New Hampshire; New York; North Carolina; North Dakota; Pennsylvania; Rhode Island; South Carolina; Utah; Vermont; Virgin Islands; Wisconsin; and Wyoming (Counties of Albany, Big Horn, Campbell, Carbon, Converse, Crook, Goshen, Johnson, Laramie, Natrona, Niobrara, Park, Platte, Sheridan, Sweetwater, Teton, Uinta, Weston, Fremont, Hot Springs, and Washakie, and that portion of Lincoln County south of a line beginning at the northwest quadrant of Sec. 1, T. 28 N., R. 121 W. extending east to the northeast quadrant of Sec. 1, T. 28 N., R. 116 W.).

(b) *Class A.* Arizona, California, Colorado, Idaho, Illinois, Indiana, Iowa, Minnesota, Montana, (Flathead County), Nebraska, New Jersey, New Mexico, Ohio, Oregon, Puerto Rico, South Dakota, Virginia, Washington, West Virginia and Wyoming (Sublette County and that portion of Lincoln County not included as Class Free).

* * * * *

Authority: Secs. 4, 5, and 6, 23 Stat. 32, as amended, secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114a–1, 115, 120, 121, 125, 134b, 134f; 7 CFR 2.17, 2.51, 371.2(d).

Done at Washington, D.C., this 8th day of November, 1984.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-29950 Filed 11-14-84; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 81

[Docket No. 84-109]

Lethal Avian Influenza; Interim Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Lethal Avian Influenza" interim rule by establishing a mechanism to allow payments under certain conditions for economic losses growing out of the destruction of poultry pursuant to the extraordinary emergency provisions of the interim rule. This action is necessary to encourage cooperation by poultry producers in the effort to eradicate lethal avian influenza.

DATES: Effective date is November 8, 1984. Written comments must be received on or before January 14, 1985.

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

FOR FURTHER INFORMATION CONTACT: Dr. William W. Buisch, Assistant Director, Emergency Programs, VS, APHIS, USDA, Room 752, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8097.

SUPPLEMENTARY INFORMATION:

Background

This document amends the "Lethal Avian Influenza" interim rule, which is set forth in 9 CFR Part 81. Lethal avian influenza is defined as a disease of poultry caused by any form of H5 influenza virus that is determined by the Deputy Administrator to have spread from the 1983 outbreak in poultry in Pennsylvania.

Subpart D of the interim rule contains extraordinary emergency provisions (set forth in §§ 81.10 through 81.15 of the interim rule) which is applicable in Pennsylvania. The extraordinary emergency provisions in § 81.12 provide for payment for poultry, carcasses or parts thereof, eggs, products, or articles required to be destroyed in accordance with that section. It is further provided in § 81.14 that poultry, carcasses or parts thereof, eggs, products, or articles required to be destroyed in accordance with § 81.12 shall be appraised by a Veterinary Services employee and that the appraisal shall be the fair market value at the time of destruction as determined by such employee. These extraordinary emergency provisions were established under the provisions of 21 U.S.C. 134a, 134b, 134d, 134e, and 134f.

There is authority for additional payments to be made under the provisions of 21 U.S.C. 114a. In this connection, 21 U.S.C. 114a provides, in relevant part that:

> The Secretary of Agriculture, either independently or in cooperation with States or political subdivisions thereof, farmers' associations and similar organizations, and individuals, is authorized to control and eradicate any communicable diseases of livestock or poultry . . . including the payment of claims growing out of destruction of animals (including poultry), and of materials, affected by or exposed to any such disease, in accordance with such regulations as the Secretary may prescribe. As used in this section, the term "State" includes the District of Columbia, Puerto Rico, and the Territories and possessions of the United States.

The Secretary has determined that the outbreak of lethal avian influenza in Pennsylvania has created an emergency situation threatening the poultry industry of the United States (see 49 FR 3494). Further, it has been determined that there are limited circumstances in which the payment of claims, in addition to claims made under subpart D of the interim rule, should be made under the provisions of 21 U.S.C. 114a in order to encourage cooperation by poultry producers in the effort to eradicate lethal avian influenza. In this connection, a new § 81.16 is added to read as follows:

(a) Whenever the Deputy Administrator finds that poultry on a premises had been destroyed under the provisions of subpart D of this part, finds that subsequently the premises had been repopulated with poultry that had been erroneously determined by the United States Department of Agriculture to be free of lethal avian influenza based on testing, and finds that such poultry used for repopulating the premises had been required to be destroyed under the provisions of subpart D of this Part; the Deputy Administrator, pursuant to the provisions of 21 U.S.C. 114a, may pay claims for economic losses growing out of the destruction of such poultry used for repopulating the premises.

(b) A claim for payment for economic losses under this section must be made in

writing to the Deputy Administrator [4] and must include all of the information relied on by the claimant for payment. The Deputy Administrator may require any additional information from the claimant deemed to be necessary for making a determination on the claim. Whether any payment will be made, and, if so, the amount of payment shall be determined by the Deputy Administrator based on all information available to the Deputy Administrator.

[4] Claims should be submitted to the Deputy Administrator for APHIS, VS, USDA, Room 320–E, Administration Building, 14th and Independence Avenue, SW., Washington, DC 20250.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to provide a mechanism to allow payments for economic losses under the circumstances referred to above, and thereby encourage cooperation by poultry producers in the effort to eradicate lethal avian influenza.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interests; and good cause is found for making this interim rule effective upon signature. Comments are solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the **Federal Register.**

Executive Order and Regulatory Flexibility Act

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

The portion of the poulty industry affected by this document represents less than one percent of the poultry industry in the United States.

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

List of Subjects in 9 CFR Part 81

Animal diseases, Poultry and poultry products, Transportation.

PART 81—LETHAL AVIAN INFLUENZA

Accordingly, 9 CFR Part 81 is amended by adding a new Subpart E to read as follows:

Subpart E—Additional Claims

§ 81.16 Certain claims arising out of destruction of poultry.

(a) Whenever the Deputy Administrator finds that poultry on a premises had been destroyed under the provisions of subpart D of this part, finds that subsequently the premises had been repopulated with poultry that had been erroneously determined by the United States Department of Agriculture to be free of lethal avian influenza based on testing, and finds that such poultry used for repopulating the premises had been required to be destroyed under the provisions of subpart D of this part; the Deputy Administrator, pursuant to the provisions of 21 U.S.C. 114a, may pay claims for economic losses growing out of the destruction of such poultry used for repopulating the premises.

(b) A claim for payment for economic losses under the section must be made in writing to the Deputy Administrator [4] and must include all of the information relied on by the claimant for payment. The Deputy Administrator may require any additional information from the claimant deemed to be necessary for making a determination on the claim. Whether any payment will be made, and, if so, the amount of payment shall be determined by the Deputy Administrator based on all information available to the Deputy Administrator.

Authority: Sec. 2, 23 Stat. 31, as amended; secs. 4–8, 23 Stat. 31–33, as amended; secs. 1–3, 32 Stat. 791, 792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; 41 Stat. 699; sec. 101(a), 58 Stat. 734, as amended; sec. 2, 65 Stat. 693; secs. 2–3, 5–6, and 11, 76 Stat. 129–132; 76 Stat. 663, 7 U.S.C. 450, 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 119–126, 130, 134a, 134b, 134d, 134e, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 8th day of November, 1984.

B. G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84–29951 Filed 11–14–84; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Commission Policy Statement on the Systematic Safety Evaluation of Operating Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Commission Policy Statement.

SUMMARY: This Policy Statement describes a pilot program for which the Commission has developed the regulatory policies and practices to conduct integrated assessments for operating nuclear power reactors. This program is called the Integrated Safety Assessment Program (ISAP) and will address significant regulatory requirements which have evolved since the plant was originally licensed and pending licensing actions which have evolved from a variety of other sources. An integrated assessment will be conducted on a plant-specific basis, as part of a trial program, to evaluate all licensing issues on a given facility and to establish schedules for any necessary plant improvements. In addition, procedures have been established to allow for a periodic updating of the resulting implementation schedules for new licensing issues that arise in the future.

FOR FURTHER INFORMATION CONTACT: Dennis M. Crutchfield, Assistant Director for Safety Assessment, Division of Licensing, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 492–7492.

SUPPLEMENTARY INFORMATION: In 1977, the Nuclear Regulatory Commission initiated the Systematic Evaluation Program (SEP). Phase I of SEP defined a specific set of safety issues (topics) to be reviewed for operating nuclear power plants. Phase II of SEP was a pilot review of those topics for eleven of the oldest domestic operating reactors. Results have evolved from SEP over the last two years and identified significant experience relative to the safety and evaluation techniques for operating plants.

In 1980, Congress enacted Pub. L. 96–295 (the NRC Authorization Bill for Fiscal Year 1980). Section 110 of Pub. L. 96–295 required that the NRC develop a program for the systematic safety evaluations of operating reactors. The program proposal would have extended SEP to an evaluation which required licensees to compare their plant design to the acceptance criteria in the

Standard Review Plan (NUREG–0800).* That program was not implemented for operating reactors; the Commission determined, and the Congress agreed, that the scope of the program was too broad to efficiently evaluate the safety of operating reactors. Congress subsequently specified in later Authorization Bills that funds should not be spent to implement that program. However, those activities were useful in that they focused attention on the needs and difficulties associated with the systematic safety evaluation of operating reactors as they relate to a constantly changing technology and increasing scope of regulatory requirements.

Following the TMI–2 accident, the NRC developed the TMI Action Plan (NUREG–0660)* from the safety lessons learned. Two aspects of the TMI Action Plan are particularly significant to the evaluation of the safety of operating plants: (1) it identified a large number of corrective actions to be implemented by operating plants and (2) it initiated the Interim Reliability Evaluation Program (IREP) in which plant-specific probabilistic risk assessment (PRA) studies were to be performed by the staff for several operating reactors to supplement the risk-reliability experience from the Reactor Safety Study (WASH–1400). The licensing actions resulting from TMI have increased the scope of outstanding licensing issues for all operating plants. Similarly, the experience thus far from IREP indicates that there are plant-specific strengths and weaknesses, from a reliability point of view, that warrant further consideration, beyond the deterministically-based issues.

One of the most significant conclusions drawn from SEP and IREP is that issues related to safety of operating nuclear power plants can be more effectively and efficiently implemented in an integrated, plant-specific review. In addition, the experience from SEP has served to focus on the set of current licensing criteria which should be evaluated for operating plants and experience from IREP has served to define the methods to conduct a plant-specific probabilistic safety analysis so that consistent, comparable results could be obtained which would enhance an integrated plant safety assessment.

* Copies may be purchased by calling (301) 492–9530 or by writing to the Publications Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Historically, licensing issues have been evaluated generically, and guidelines for any necessary corrective actions have been applied uniformly to all plants. While this approach has provided an effective means to ensure resolution of these issues, the generic implementation has not given sufficient attention to plant-specific characteristics which have a direct bearing on the appropriateness of the corrective action and the relative importance of the issue in relation to an overall plan for any necessary plant improvements. In some cases, consideration of plant-specific characteristics have identified alternative corrective actions which provide an equivalent or greater measure of safety, often at less cost to the licensee.

Consequently, the NRC had developed the regulatory procedures and attendant policies to conduct integrated assessments for operating power reactors. This approach is called the Integrated Safety Assessment Program (ISAP). In order to ensure the effectiveness of this program, it will be started on a trial basis and the plants to be reviewed have been selected by the NRC Staff from those licensees who indicated an interest to voluntarily participate in such a program.

Based on the results of this trial program, the NRC will decide, in about a year, whether or how this program should be extended to other operating reactors.

Implementation Schedules

To provide a stable environment to conduct ISAP, the Commission has authorized the staff to suspend specific existing implementation schedule requirements for the plants to be reviewed. Each affected licensee will be expected to propose and justify deferral for specific implementation requirements that warrant further evaluation. The associated implementation requirements and other safety issues will be evaluated collectively in an integrated assessment. The staff is only authorized to defer substantive regulatory and other requirements to the extent allowed by the Commission's procedural regulations. Thus, the staff will use the provisions in 10 CFR 50.12 to grant any exemptions.

In addition, any new implementation requirements which evolve late in the course of or following ISAP will be deferred for the plants involved and incorporated in an implementation schedule update, as described below.

The only exceptions will be issues for which the NRC Staff explicitly determines that prompt action is required to protect the health and safety of the public. Such actions include the short-term response to bulletins issued by the Office of Inspection and Enforcement.

Scope of Evaluation

The scope of ISAP is intended to be as comprehensive as practical. Consequently, it will consist of deterministic, probabilistic, and operating experience evaluations, which will serve to identify specific issues to be addressed in an integrated assessment.

The deterministic review areas, or ISAP topics, will be derived on a plant-specific basis during a screening review with the licensee at the beginning of the program. The issues to be considered are (1) a set of SEP Topics for which the NRC Staff has found significant differences between current licensing criteria and typical design criteria in existence when operating plants were licensed; (2) all pending licensing actions for the plant, including multi-plant actions, TMI Action Plan requirements and plant-specific licensing actions; (3) the unresolved generic issues for which resolution on a plant-specific basis might be expected, and (4) plant improvements proposed by the licensee.

The Commission's Safety Goal Policy published on March 14, 1983, (48 FR 10772), indicates that the quantitative goals and design objectives will not be used in the licensing process during the evaluation period, nor will the policy be interpreted as requiring that licensees or applicants perform a probabilistic analysis; however, the Commission continues to believe that probabilistic analyses provide a valuable adjunct to the deterministic regulatory requirements and enhance engineering judgments, if they are properly performed and applied. Consequently, the Commission believes that a plant-specific probabilistic safety assessment (PSA) should be performed in conjunction with ISAP. The plant-specific PSA will provide a basis for cost/benefit evaluations for the deterministically-based issues and will also identify potential strengths and weaknesses in the plant design and operation which should be considered in an integrated assessment.

An operating experience evaluation will be conducted in parallel with the topic evaluations and plant-specific PSA. This evaluation will be used to identify issues related to significant

trends, event precursors, plant management and operation, and maintenance practices. In addition, the operating experience evaluation will provide a diverse perspective for the integrated assessment. The evaluation will consist of an analysis and categorization of reportable events and forced plant shutdowns and an evaluation of overall licensee performance.

Evaluation Process

The ISAP Topic evaluations and plant-specific PSA will be conducted in parallel. The licensee will initially perform deterministic analyses for the plant-specific set of ISAP Topics by comparing the as-built design of the facility to the current licensing criteria, industry codes and standards, or other appropriate acceptance criteria and also provide risk perspectives for each issue based on the PSA. The staff will review the licensee's analyses and issue safety evaluation reports which identify specific differences from the acceptance criteria and any attendant safety issues which should be considered in the integrated assessment. Schedules for the licensee's analyses and staff evaluation will be established during the screening review to enhance an efficient use of resources.

A PSA would be conducted by the licensee in accordance with an NRC Procedures Guide (NUREG/CR–2815).* The Procedures Guide describes appropriate and consistent methods for (1) initiator definition, (2) application of data, (3) success/failure criteria, (4) analysis, (5) quality control, and (6) documentation and presentation of results. In addition, the NRC Staff will identify methods by which the PSA should address unresolved generic issues; i.e., safety issues for which acceptance criteria do not yet exist. During the screening review, milestones will be established to monitor the progress of the PSA and to ensure appropriate interaction between the NRC Staff and the licensee. The licensee will be expected to use the PSA to identify significant contributors to risk that should be specifically considered in the integrated assessment. For the trial program, the extent and nature of plant-specific probabilistic analyses will be established on a case-by-case basis.

The issues raised in the ISAP Topic evaluations and the PSA, and the operating experience evaluation will be considered collectively in an integrated assessment. Decisions on corrective actions will be based on qualitative assessments of the value and impact of each action. The NRC Staff will present its conclusions regarding the need for or appropriateness of corrective actions proposed by the licensee for each of the identified issues in a draft report. The draft report will be issued for public comment and peer review. Should the NRC Staff and licensee disagree on the corrective action for any issue, that matter will be resolved in accordance with the Commission's procedures for backfitting requirements.

Following resolution of any comments on the draft report, the NRC Staff will request that the licensee establish and justify implementation schedules for each of the corrective actions and any ongoing analyses that may be necessary to establish appropriate corrective actions. The NRC Staff will judge the adequacy of the proposed implementation schedules based on the technical evaluation of the issues presented in the draft report and issue an implementation plan in a final report.

Licensing Action and Schedule Updates

The final report will serve as the basis and documentation for a license amendment incorporating and formalizing the implementation schedules. The license amendment will also establish procedures to periodically update the implementation schedule.

Any new implementation requirements that arise during or following an ISAP review will be deferred, except for those issues for which the NRC Staff determines that prompt action is required to ensure the health and safety or common defense and security of the public.

The deferred implementation requirements will be evaluated collectively as part of an implementation schedule update. The update evaluations would be conducted periodically, but not more than at five-year intervals. The evaluation would follow the same general course as an ISAP review and would consider a revised PSA, which has been updated to reflect corrective actions and plant improvements as they are completed. The revised implementation schedule will similarly be incorporated and formalized by a new license amendment.

Dated at Washington, D.C., this 9th day of November 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 29991 Filed 11–14–84; 8:45 am]

BILLING CODE 7590–01–M

10 CFR Part 50

Environmental Qualification of Electrical Equipment; Status of June 30, 1982, Deadline; Statement of Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of Policy.

SUMMARY: In July 1984, the Nuclear Regulatory Commission and the Union of Concerned Scientists entered into a stipulation in settlement of *Union of Concerned Scientists* v. *Nuclear Regulatory Commission*, U.S.C.A., D.C. Cir. No. 83–1242. This Statement of Policy is in compliance with the publication requirements of one provision of the stipulation. It is intended to advise the public on the status of the previously imposed June 30, 1982 deadline for licensee compliance. This is accomplished through the publication of the stipulation of the Commission's position on the effect of its final rule on Environmental Qualifications of Electric Equipment (48 FR 2729; January 21, 1983).

EFFECTIVE DATE: July 25, 1984.

FOR FURTHER INFORMATION CONTACT: C. Sebastian Aloot, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (202) 634–3224.

SUPPLEMENTARY INFORMATION: The Union of Concerned Scientists and the Nuclear Regulatory Commission agree as follows:

1. On June 30, 1982, the Commission issued an interim rule by which it sought to amend the operating licenses of certain plants to eliminate the June 30, 1982 deadline for compliance with environmental qualification requirements established in CLI–80–21 and later actually written into those reactor operating licenses.[1]

2. On January 20, 1982, the Commission proposed to codify environmental qualification requirements and to establish a compliance deadline. The Commission issued a final rule based upon that proposal on January 21, 1983 (48 FR 2729). In the preamble to the final rule, the Commission stated its intent that the compliance deadline embodied in the final rule would supersede all other compliance schedules.

[1] Pursuant to CLI–80–21, the deadline was incorporated into existing reactor operating licenses by a series of orders. With respect to operating licenses issued thereafter, the deadline was included as a license condition. This practice continued up through the time the Commission issued the June 30, 1982 interim rule.

3. In *Union of Concerned Scientists* v. *Nuclear Regulatory Commission*, 711 F.2d 370 (1983), the Court of Appeals for the District of Columbia Circuit ruled that the interim rule was based upon a Commission finding that continued reactor operation would not be inimical to the public health and safety pending full compliance with environmental qualification requirements. The Court also held that the interim rule was invalid because the Commission had failed to give notice and an opportunity for public comment on the safety finding.

4. Because the decision in *UCS* v. *NRC* came after promulgation of the final rule, the compliance schedule in that rule was set in the belief that the 1982 deadline had been deleted from all licenses into which it had been actually written. As a result of the Court's decision in *UCS* v. *NRC*, however, the Commission has concluded that the final rule should not be relied on as having amended licenses to eliminate the compliance deadline of June 30, 1982 from those licenses into which it was actually written. The Commission will not argue that the final rule has such an effect in this or any subsequent litigation or administrative proceedings involving environmental qualification for such plants.

5. Therefore, as a result of the Court's decision of June 30, 1983, the Commission regards the compliance deadline of June 30, 1982 as remaining in effect with respect to the environmental qualification requirements established in CLI-80-21, for those plants having a June 30, 1982 deadline actually written into their reactor operating licenses. Such plants not meeting those requirements as of June 30, 1982 were then in violation of their licenses and remain so until either the requirements are met or the licenses are lawfully amended to remove or modify the deadline. The Commission has proposed to eliminate the deadline by amending all licenses through a notice and comment rulemaking initiated in response to *UCS* v. *NRC*, 711 F.2d 370 (D.C. Cir. 1983), and now in progress. 49 FR 8445 (March 7, 1984). Any extension of the June 30, 1982 deadline depends at present upon the outcome of that rulemaking proceeding. The Commission will expedite the conclusion of the ongoing rulemaking and intends to reach a decision by August 15, 1984.[2]

6. In a Policy Statement (49 FR 8422), the Commission has stated the reasons why it believes that no enforcement action with regard to violation of the deadline is appropriate, pending conclusion of the rulemaking. However, enforcement action for demonstrated safety deficiencies may be taken at any time, regardless of the status of the June 30, 1982 rule.

7. The Commission will not interpret its Policy Statement of March 7, 1984 in any manner that violates the terms of this stipulation.

8. The Union of Concerned Scientists agrees to withdraw the Petition for Review that it filed in this case on March 7, 1983.

9. The Commission agrees to publish this stipulation in the Federal Register as a Policy Statement.

10. The parties agree that the Union of Concerned Scientists is entitled to pursue recovery of such attorneys' fees and costs as may be authorized by the Equal Access to Justice Act, 28 U.S.C. 2412(d)(1)(B). In entering into this stipulation, however, the Nuclear Regulatory Commission does not concede that the Union of Concerned Scientists is entitled to recover any attorneys' fees or other expenses and expressly reserves the right to oppose any application for such attorneys' fees or other expenses.

Sheldon L.Trubatch, Acting Solicitor
Juan L. Rodriquez, Attorney, United States Nuclear Regulatory Commission, Washington, DC 20555
Diane Curran, Attorney
William S. Jordan, III, Attorney
Ellyn R. Weiss, Attorney, Harmon, Weiss & Jordan, 2001 S Street, NW, Suite 430, Washington, DC 20009

Dated at Washington, DC, this 8th day of November 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission

[FR Doc. 84-30007 Filed 11-14-84; 8:45 am]

BILLING CODE 7590-01-M

[2] On September 5, 1984, subsequent to the execution of this stipulation, the Commission issued a final rule deleting the June 30, 1982 deadline from individual licenses.

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 84-620]

Brokered Deposits, Limitations Applicable to Insured Institutions; Technical Correction

Dated: November 8, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Technical correction.

SUMMARY: On September 28, 1984, the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), extended the effective date of its rule limiting the acceptance of brokered deposits by institutions with low net worth. The resolution, because of a typographical error, mislabelled the effective-date paragraph as paragraph "(c)." That provision should have been labelled as paragraph "(e)." This action corrects that error.

EFFECTIVE DATE: November 5, 1984.

FOR FURTHER INFORMATION CONTACT: Christopher P. Bolle, Attorney, Office of General Counsel (202-377-7057), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

List of Subjects in 12 CFR Part 563

Savings and loan associations.

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

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

Accordingly, FR Doc. 84-26098, published at 49 38924 is corrected as follows: In § 563.4, the paragraph now designated as paragraph (c), is corrected to be designated as paragraph (e). The correctly designated paragraph (e) reads as follows:

§ 563.4 Brokered deposits.

* * * * *

(e) This section expires February 1, 1985.

(12 U.S.C. 1724, 1725, 1726, 1728, 1730)

By the Federal Home Loan Bank Board

Norman H. Raiden,

General Counsel.

[FR Doc. 84-29879 Filed 11-14-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 8671]

The Sperry & Hutchinson Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: After reviewing the "Request To Reopen And Modify Order" filed by The Sperry & Hutchinson Company ("S&H"), the Commission concluded that it was in the public interest to grant the

company's request to set aside Section I of the Consent Order issued on September 18, 1973, 38 FR 28656, which required the company to redeem its trading stamps for cash as well as for merchandise. The company had demonstrated that due to changed conditions, consumers can now readily avoid both S&H trading stamps and other trading stamps in virtually all markets, and thus avoid any injury that might result from a merchandise-only redemption policy. S&H had further demonstrated that the cash redemption requirement is also adversely affecting its ability to compete against other suppliers of promotional services that are not subject to comparable restraints. Finding that the cash redemption provision no longer served any legitimate remedial purpose, the Commission reopened the matter and set aside Section I of the 1973 Consent Order.

DATES: Consent Order issued September 18, 1973; Modifying Order issued October 3, 1984.

FOR FURTHER INFORMATION CONTACT: Selig S. Merber, L/301–18, Washington, D.C. 20580, (202) 634–4642.

SUPPLEMENTARY INFORMATION: In the Matter of The Sperry & Hutchinson Company, a corporation. Codification appearing at 38 FR 28656 remains unchanged.

List of Subjects in 16 CFR Part 13

Trading stamps, Trade practices.

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

Commissioners: James C. Miller III, Chairman, Michael Pertschuk, Patricia P. Bailey, George W. Douglas, Terry Calvani.

In the Matter of The Sperry & Hutchinson Company a corporation; Docket No. 8671.

Order Modifying Decision and Order Issued: September 18, 1973

On July 6, 1984, respondent The Sperry & Hutchinson Company ("S&H") filed a "Request To Reopen And Modify Order" ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and § 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen and modify the consent order issued on September 18, 1973 ("the order") by setting aside Section I. Section I of the order requires S&H to redeem its trading stamps for cash at the option of the stamp saver, at a fixed cash redemption value, if the stamps are presented in minimum quantities of 300.

After reviewing respondent's request, the Commission has concluded that the public interest warrants reopening and modification of the order by setting aside Section I.

At the time of the original proceeding in this matter trading stamps were so pervasive in the marketplace that many consumers found them difficult if not impossible to aviod. In such a context, the cash redemption requirement of the order afforded stamp savers an alternative to respondent's traditional policy of redeeming its stamps only for merchandise. S&H has demonstrated that conditions have now changed to the extent that consumers can readily avoid both S&H stamps and trading stamps in general in virtually all markets and, as a consequence, can avoid any injury that might otherwise arguably result from a merchandise-only redemption policy. S&H has also shown that the continued existence of the cash redemption requirement is injuring its ability to compete against other suppliers of promotional services both inside and outside the trading stamp industry, which are not subject to comparable restraints. In view of these circumstances the cash redemption provision no longer serves any legitimate remedial purpose.

Accordingly, it is ordered that this matter be, and it hereby is, reopened, and that Section I of the Commission's order issued on September 18, 1973, shall be of no further force and effect as of the effective date of this order.

By the Commission.

Issued: October 3, 1984.

Emily H. Rock,

Secretary.

[FR Doc. 84–29931 Filed 11–14–84; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket No. C–3147]

Chevron Corporation and Gulf Corporation; Prohibited Trade Practices, and Affirmative Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires Chevron Corporation (formerly the Standard Oil Company of California) to divest within six months to a Commission-approved buyer(s) all of the Gulf Corporation assets listed in Schedule A, as well as any additional assets and businesses that the company wishes to include as part of the assets to be divested, or which the Commission determines is necessary to ensure that the divested properties remain ongoing, viable business enterprises. Chevron is also required to provide prospective acquirers of the Schedule A Properties with petroleum product exchanges and crude oil arrangements if necessary to ensure divestiture of the Properties as ongoing viable enterprises engaged in the same businesses in which they are presently employed; and to maintain the assets as a separate viable business in accordance with the terms of the attached Agreement to Hold Separate, until required divestiture has been completed. The companies are additionally prohibited from acquiring without prior Commission approval, certain types of business located in specified geographic areas for a period of ten years.

DATE: Complaint and Order issued October 24, 1984.*

FOR FURTHER INFORMATION CONTACT: Joan L. Heim, L/502–6, Washington, D.C. 20580, (202) 634–4781.

SUPPLEMENTARY INFORMATION: On Thursday, June 7, 1984, there was published in the **Federal Register**, 49 FR 23812, a proposed consent agreement with analysis In the Matter of Standard Oil Company of California, a corporation, and Gulf Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5–20 Federal Trade Commission. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records.

List of Subjects in 16 CFR Part 13

Gasoline, Mergers, Petroleum products, Trade practices.

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* Copies of the Complaint and the Decision and Order filed with the original document.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc. 84-29932 Filed 11-14-84; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-3146]

Hospital and Health Services Credit Union; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this Consent Order requires an Ann Arbor, Michigan credit union, among other things, to cease failing to disclose, when rejecting a credit application or increasing the cost of credit, that the action is based partially or wholly on information contained in a consumer credit report; and provide the rejected applicant with the name and address of the reporting agency together with the specific principal reason(s) for the adverse action based on this information. The Order also requires the credit union to send to consumers who were denied credit between January 1, 1983, and the effective date of the Order, a letter containing required disclosures.

DATE: Complaint and Order issued October 17, 1984.*

FOR FURTHER INFORMATION CONTACT: George T. O'Brien, FTC, B-424, Washington, D.C. 20580. (202) 376-3466.

SUPPLEMENTARY INFORMATION: On Thursday, August 9, 1984, there was published in the **Federal Register**, 49 FR 31901, a proposed consent agreement with analysis In the Matter of Hospital and Health Services Credit Union, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

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

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Collecting, Assembling, Furnishing or Utilizing Consumer Reports: § 13.382 Collecting, assembling, furnishing or utilizing consumer reports; § 13.382-1 Confidentiality, accuracy, relevancy and proper utilization; § 13.382-1(a) Fair Credit Reporting Act; § 13.382-5 Formal regulatory and/or statutory requirements; § 13.382-5(a) Fair Credit Reporting Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-37 Formal regulatory and/or statutory requirements; § 13.533-45 Maintain records.

List of Subjects in 16 CFR Part 13

Credit, Credit bureau, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128-36; 15 U.S.C. 1681-1681T)

Emily H. Rock,

Secretary.

[FR Doc. 84-29933 Filed 11-14-84; 8:45 am]

BILLING CODE 6750-01-M

* Copies of the Complaint and the Decision and Order filed with the original document.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21470; File No. S7-967]

Initiation or Resumption of Quotations Without Specified Information

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to Rule 15c2-11 under the Securities Exchange Act of 1934. Rule 15c2-11 regulates the submission and publication of quotations by broker-dealers for certain over-the-counter securities. Under the rule, a broker-dealer must maintain specified information about the security and its issuer prior to initiating or resuming a quotation in an inter-dealer quotation system. The amendments make the rule applicable to publication of quotations without a specified price and to publication of quotations for certain foreign securities and depository shares evidenced by American Depositary Receipts. However, exceptions to the rule are established for the publication of quotations for NASDAQ securities and for quotations that represent a customer's indication of interest. The amendments also revise the scope of the rule's piggyback exception. Finally, several technical and clarifying amendments are made to the rule. The amendments adapt the rule to developments in the over-the-counter securities market that have occured since the rule's adoption in 1971.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Larry E. Bergmann (202-272-2874) or Nancy J. Burke (202-272-2848), Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Amendments

The Securities and Exchange Commission today is adopting amendments to Rule 15c2-11 ("Rule 15c2-11" or the "Rule") [1] under the Securities Exchange Act of 1934 (the "Act").[2] The Commission solicited public comment concerning proposed amendments to the Rule on April 14, 1983.[3] The Commission intends to continue its review of the benefits and costs associated with the Rule and will shortly seek public comment on these matters, including whether there are alternative regulatory approaches that would better achieve the Rule's objectives.

Rule 15c2-11 regulates the initiation or resumption of quotations in a "quotation medium" by a broker or dealer for over-the-counter securities. Subject to certain exceptions, the Rule generally requires that, prior to entering the quotation, a broker or dealer have on hand specified information about the security and its issuer.

Adopted in 1971,[4] the Rule was designed to deter manipulative and fraudulent behavior that had been prevalent in connection with the distribution and trading of unregistered securities of corporations having little or no earnings, assets or operations ("shell corporations").[5] A broader purpose of

[1] 17 CFR 240.15c2-11. The amendments are effective sixty days from the date of their publication in the **Federal Register**

[2] 15 U.S.C. 78a-jj.

[3] *See* Securities Exchange Act Release No. 19673 (April 14, 1983), 48 FR 17111 (April 21, 1983) (the "Proposing Release").

[4] Securities Exchange Act Release No. 9310 (September 13, 1971), 36 FR 18641 (September 18, 1971). Rule 15c2-11 was adopted under Section 15(c)(2) of the Act, among other sections. Section 15(c)(2) gives the Commission the broad authority to promulgate rules that define, and that prescribe means reasonably designed to prevent, fraudulent, deceptive or manipulative acts or practices in the over-the-counter securities market.

[5] Rule 15c2-11 was intended to address a variety of questionable practices involving a "spin-off" or other distribution to the public of the securities of a shell corporation and the subsequent active trading of those shares at increasingly higher prices that bore no relation to the securities' value. *See* Securities Act Release No. 4982 (July 2, 1969).

the Rule, however, is to prohibit broker-dealers from establishing arbitrary quotations for infrequently traded over-the-counter securities. The Rule's information retention requirement is intended to help ensure that quotations for those securities (and any upward movement in such quotations) are not clearly inconsistent with current financial and other information about the quoted security and its issuer.

While the Rule has helped somewhat to minimize the problem of manipulative trading in the securities of reactivated shell corporations, the Rule as presently structured does not adequately achieve its more general purpose of preventing arbitrary quotes for certain thinly traded securities. This is largely because of fundamental changes in the structure and practices in the over-the-counter securities market which have taken place since the Rule's adoption. For example, unlike the practice that existed in 1971, today most indications of interest for over-the-counter securities, other than those securities quoted on NASDAQ,[6] are published in quotation media without a specified price ("unpriced entries") and therefore have fallen within an exception to the Rule. Accordingly, the Commission proposed several amendments designed to increase the effectiveness of the Rule. The Commission also announced its determination to review the Rule in its entirety and sought comment as to whether the Rule has achieved, or could be amended to achieve, its intended purposes without the imposition of undue burdens.

Eight comment letters were received with respect to the proposed amendments to, and review of, Rule 15c2–11.[7] The majority of commentators endorsed the basic framework of the Rule. While some of these commentators suggested modifying or eliminating particular proposals, in the main they believed that the Rule continues to serve a valid regulatory purpose. One commentator, however, asserted that the Rule presently does not achieve its stated purpose and that the burdens imposed by a revised Rule would not be justified by "demonstrable benefits." In that commentator's view, the Rule should be rewritten. Another commentator, who principally addresssed the foreign securities proposals, remarked that the Rule and the proposed amendments misperceive the over-the-counter market and the limited function performed by market makers. No commentator explicitly supported rescission of the Rule; in fact, some commentators noted their opposition to this alternative.

While there is no fail-safe mechanism to deter fraud and manipulation in the over-the-counter trading of securities of reactivated shell corporations or, more generally, of securities characterized by low levels of trading activity, the Commission believes that Rule 15c2–11 may play an important role in these areas. The Rule is intended to require a broker-dealer to give some measure of attention to financial and other information about the issuer of a security before it commences trading in that security. A by-product of the Rule is its usefulness as a surveillance tool, because under current practice the Commission in certain circumstances receives notification whenever a quotation for a covered security is to be published. In addition, the requirement that market makers maintain information regarding issuers enhances the Commission's investigative ability to determine whether employees of broker-dealers knowingly provided customers with false or misleading information regarding a particular security. The Commission has decided to amend the Rule to strengthen its provisions, while at the same time making it more responsive to changes in the over-the-counter market. The amendments adopted today: create an exception from the Rule for NASDAQ-quoted securities; subject unpriced entries to the Rule; establish an exception for quotations representing an unsolicited indication of interest of a customer (other than a person acting as or for a dealer); extend the Rule to cover certain foreign securities and depositary shares evidenced by American Depositary Receipts ("ADRs"); and amend the scope of the Rule's "piggyback" provision. Aside from the exception for NASDAQ securities and the modifications to the piggyback provision, which were not specifically proposed by the Commission, the amendments are substantially equivalent to the form in which they were proposed. The proposal which would restrict the information provisions of redesignated paragraph (a)(5) of the Rule to the quotation of the securities of nonreporting companies is adopted with modifications to meet objections raised by commentators.

II. Amendments to Rule 15c2–11

A. Amendment to Paragraph (f): New Exception for NASDAQ-Quoted Securities

In the Proposing Release, the Commission invited comment generally as to the advisability of amending the Rule to include an exception for certain NASDAQ-quoted securities. Because of the operation of paragraph (f)(3) of the Rule, commonly known as the "Piggyback" provision, a NASDAQ-quoted security generally qualified for an exception from the Rule shortly after publication of an initial quotation for that security.[8]

Two commentators favored the creation of an overall exception from the Rule for NASDAQ-quoted securities. Both commentators pointed to the qualification standards and continuing disclosure obligations that the NASD imposes on an issuer when it authorizes a security for NASDAQ trading. In their view, these requirements assure both the exclusion of shell corporations from NASDAQ and the public availability of adequate and current information about NASDAQ issuers, thus rendering the Rule's information maintenance requirement duplicative and unnecessary.

Since the Rule's adoption, the NASDAQ system has developed as the principal quotation medium for actively traded over-the-counter securities. The NASD requires that a NASDAQ security and its issuer satisfy certain qualification criteria. Generally, these standards specify that a security authorized for quotation on NASDAQ be subject to regular and continuous two-way priced quotations by at least two market makers; that there be a minimum number of shares of the security in the hands of a minimum number of public shareholders; and that the issuer meet minimum asset as well as captial and surplus requirements and comply with certain continuing filing and disclosure obligations.[9] The filing and disclosure requirements are intended to assure that information about a NASDAQ issuer is available to the marketplace and is updated on a timely and continuous basis. The finanical qualification standards tend to inhibit the quotation of shell corporation

[6] NASDAQ is the automated quotation system operated by the National Association of Securities Dealers, Inc. (the "NASD") and provides over-the-counter quotations on a real-time basis for approximately 4500 securities.

[7] Copies of these comment letters, as well as a Summary of Comments prepared by the staff of the Commission, are contained in File No. S7–967 and are available for inspection and copying at the Commission's Public Reference Room.

[8] Under the piggyback provision, a broker-dealer is exempt from the Rule's information maintenance requirement when it enters a quotation for a security that has been the subject of both bid and asked quotes at specified prices for at least twelve business days during the previous thirty calendar days, with no more than four consecutive business days without such two-way quotes.

[9] NASD By-laws, Schedule D, Art. XVI, Sec. 3, NASD Manual (CCH) ¶1653A.

securities through the NASDAQ system. The NASD has recently committed to intensify its review of issuer filings to enforce compliance with NASDAQ qualifications standards, including disclosure obligations. This enhanced review process, coupled with the NASD's authority to suspend quotes based upon finding materially deficient corporate disclosures, should provide adequate safeguards to investors. The NASD has also committed to build a transaction audit trail for all NASDAQ securities to provide more effective market surveillance. In light of the foregoing considerations, an exception from the Rule has been established for the publication of quotations for securities authorized to be quoted in the NASDAQ system, so long as such authorization has not been suspended, terminated or prohibited.[10]

B. Amendment to Paragraph (e): Unpriced Entries Subject to the Rule

The Commission has determined to adopt without change the proposed revision to the Rule's definition of "quotation" to include any published indication of a broker's or dealer's willingness to receive bids or offers for, or to advertise its interest in, a particular security. Thus, the broker-dealer must comply with the Rule's information retention requirement whenever it submits or publishes an entry whether or not it provides the price at which it is willing to effect a transaction in the security.[11]

Three commentators supported extending the Rule to cover unpriced entries, while three others opposed the proposal. Factors cited in favor of the proposed amendment were coverage of a broader range of entries presenting the potential for fraudulent or manipulative abuse and removal of the apparent disincentive to the submission of priced quotes. Opponents observed that the absence of price information in the pink sheets has resulted from reasons other than a broker-dealer's desire to avoid the Rule. They cited the development of NASDAQ, in which priced quotations are entered on a real-time basis, and the delay between a broker-dealer's submission of a priced entry to the pink sheets and its subsequent publication. These factors were claimed to create a disincentive to the submission of priced entries for non-NASDAQ securities because of the costs involved and the potential for a priced entry, when published, to be at variance with the actual market for the quoted security. Opponents of the unpriced entry proposal also cited the administrative costs associated with a broker-dealer's collection and retention of the specified issuer-related information. One commentator remarked that these costs will impede many broker-dealer's from submitting quotations for certain over-the-counter issues, thereby interfering with the availability of a market for these securities and hindering capital formation for emerging companies. This commentator also remarked that priced entries, rather than unpriced entries, historically are used to facilitate a manipulation in shell company securities because they provide an appearance of price increases in the quoted security. The commentator suggested that, if the Commission is concerned that the pink sheets may be used for manipulative purposes, consideration should be given to a requirement of last sale, high sale and low sale information within a specified period of time for securities quoted in the sheets.

While it may be true that manipulation is facilitated by priced entries, the Commission believes nonetheless that a market for a security can develop and be influenced by a broker-dealer even though it submits an unpriced entry for that security in a quotation medium. For example, a market maker can display its trading interest in a security by regularly inserting an unpriced entry for that security in a quotation medium accepting such entries and then furnish priced quotations in private communications with interested parties. Any such priced quotation would tend to be the primary indication of trading activity and price levels in the security and, because of improved means of rapid communication, it may stimulate the development of an active market for that security. For that reason, and in view of the increased tendency of market makers to insert unpriced entries in quotation media allowing such entries,[12] the Commission has determined to extend the Rule to include such entries. This amendment does not mandate priced entries, but merely specifies that a broker-dealer submitting an unpriced entry maintain certain information about the security's issuer. The companion amendment adopted today, which excepts from the Rule quotations representing an unsolicited customer order, should confine the impact of the unpriced entry amendment principally to the publication of unpriced quotes by market makers. As for the recordkeeping burdens on broker-dealers, broker-dealers already may have the specified information in their files. If not, the expense involved in securing the information required by the Rules should not be substantial.

C. Amendment to Paragraph (f): Exception for Quotations Representing Unsolicited Customer Indications of Interest

The Commission is adopting with modification the proposal that excepts from the Rule the publication or submission of any quotation representing an unsolicited indication of interest or order submitted on behalf of a customer (other than a person acting as or for a dealer).[13] Three commentators favored the amendment as proposed, while one commentator suggested expanding the exception to include any one-sided offer, regardless of whether that offer was solicited or was submitted on behalf of another broker or dealer. One commentator expressed concern that the amendment would exclude from the Rule unsolicited entries submitted by a customer as part

[10] If NASDAQ authorization for a security is suspended or terminated, but the security remains eligible for quotation in another inter-dealer quotation medium, a broker or dealer will be required to have in its records the information required by the Rule in order to publish a quotation in such other system.

[11] Although NASDAQ requires that a broker-dealer submit two-sided priced quotations to indicate interest in a particular security through that system, other inter-dealer quotation media permit the publication of various expressions of trading interest. In certain systems, such as The National Daily Quotation Service (the "pink sheets"), a broker or dealer may enter a priced quotation on both the buy and sell sides or on one side only. Alternatively, a broker or dealer may advertise its interest in buying or selling a particular security by inserting (i) "OW" (offer wanted), indicating that the firm is interested in receiving an offer from persons who want to sell the security; (ii) "BW" (bid wanted), indicating its interest in receiving bids from persons who want to buy the security; or (iii) the broker-dealer's name only, advertising the firm's general interest in buying and selling the security.

[12] It is estimated that over 90% of today's pink sheet entries are unpriced. *See* letter to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, from David M. Burnett, President, National Quotation Bureau, Inc., dated June 14, 1983.

[13] The amendment has been modified to include within the meaning of "customer" a broker acting on behalf of anyone other than a dealer. For example, the exception would be available where a broker-dealer, such as a "discount" broker, receives a *bona fide* unsolicited indication of interest from a customer other than a dealer and submits that interest to another broker-dealer with which it has a correspondent relationship and which regularly enters quotations in a quotation medium. If the correspondent broker-dealer does not accept as principal an order resulting from the customer's interest, it may agree to publish a quotation in a quotation medium solely to reflect the originating broker's customer indication of interest. That quotation will be excepted from the Rule under paragraph (f)(2), since the originating broker did not solicit the customer's indication of interest and since no person in the series of relationships is a

of an unlawful plan to "paint the sheets" with quotations bearing no relationship to the security's value.

The provision excepting unsolicited customer indications of interest serves as an appropriate complement to the amendment, also adopted today, which subjects unpriced entries to the Rule. Since there is generally less likelihood of fraudulent or manipulative conduct on the part of the broker-dealer submitting a customer-initiated quotation, it is unnecessary in this case to subject such a quotation to the Rule's information maintenance requirement.

D. Rescission of Exception for Foreign Securities Contained in Former Paragraph (f)(2) of the Rule

The several amendments relating to the quotation of securities of a foreign private issuer and of ADRs that represent deposited shares of a foreign private issuer are adopted as proposed. In this regard, the Commission is rescinding paragraph (f)(2) of Rule 15c2–11, which excluded from the Rule the quotation of securities of foreign private issuers exempt from registration under section 12(g) of the Act by reason of Rule 12g3–2(b).[14]

New paragraph (a)(4) [15] has been added to the Rule, establishing an information maintenance requirement for brokers and dealers in certain foreign securities. Under new paragraph (a)(4), any broker or dealer who publishes a quotation for a security of a foreign private issuer qualifying for a registration exemption under Rule 12g3–2(b) must maintain in its records, and provide to any person upon request, the information furnished to the Commission since the beginning of the issuer's last fiscal year.[16]

The Commission also is adopting the proposals that require a broker or dealer inserting a quotation for ADRs to maintain information about the foreign private issuer of the underlying shares. Accordingly, paragraph (a)(1) of the Rule has been modified to disallow a broker's or dealer's reliance on any registration statement filed on Form F–6, since that form relates to the depositary and the ADR's terms and not to the issuer of the underlying foreign shares.[17] In addition, new paragraph (e)(4) has been added to the Rule, which provides that, in the case of a quotation for ADRs, the term "issuer" for purposes of the Rule means the issuer of the deposited shares. Consequently, before submitting a quotation for an ADR, a broker or dealer will have to obtain information about the foreign issuer which satisfies the information requirements of the Rule.[18]

The Commission remains concerned about continued publication of quotations for foreign securities or ADRs without sufficient information about the foreign issuer being available to the interdealer marketplace. Public demand for the securities of foreign issuers and for ADRs has grown in recent years and reinforces the need to assure that quotations for those securities, particularly in the case of infrequently traded securities of lesser known foreign companies, are not arbitrary. As a consequence of the Commission's decision to adapt Rule 15c2–11 to recent developments in securities markets, it is appropriate to extend the Rule to cover foreign securities and ADRs which are traded in the over-the-counter market.

Several commentators who addressed the foreign issuer proposals focused principally on perceived burdens associated with coverage of foreign securities and ADRs under the Rule. One commentator who supported the proposals noted that broker-dealers would not have any greater burden on obtaining the required information from foreign issuers than they would from domestic issuers. Three commentators contended that, as Rule 12g3–2(b) does not specify the particular documents to be furnished to the Commission or the date by which any such materials are to be received, broken-dealers would face problems in identifying materials submitted by the foreign issuer, in ascertaining whether the issuer is in compliance with Rule 12g3–2(b), and in being certain that any information received directly from the issuer corresponds to that furnished to the Commission.

Broker-dealers have a variety of sources from which to obtain the requisite information, at a reasonable cost and in a timely fashion. These sources include the Commission, commercial services, and the foreign issuer itself. It is important to note that the amendments do not require broker-dealers to guarantee the adequacy or currency of the information they maintain under the Rule nor do they require broker-dealers affirmatively to conduct an inquiry into the adequacy or currency of the information before submitting a quotation for a foreign security or ADR.[19]

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securities firm acting in a dealer capacity. Also a revision has been made to exclude two-way priced entries based upon unsolicited customer indications of interest unless the quotation medium specifically identifies the quotation as representing such interests. The exclusion is designed to prevent the use of such two-way quotations to support the application of the piggyback provision. *See* Section II.E., *infra*. This exclusion would not unduly restrict the handling of customer-initiated orders because it would be rare that a broker-dealer initiating or resuming a quotation would have in hand at one time unexecuted, unsolicited priced customer orders both to buy and sell a security covered by the Rule. In the event that the broker-dealer wished to reflect such unsolicited customer orders without maintaining the information required by the Rule, it would be necessary for one or both sides of the entry to be unpriced.

[14] Under Rule 12g3–2(b), securities of a foreign private issuer that has not voluntarily pursued U.S. trading markets for its securities are exempt from the registration requirements of Section 12(g) of the Act. The Rule 12g3–2(b) exemption is conditioned upon, among other things, the issuer (or an appropriate government agency in its domicile) furnishing to the Commission copies of investment information which is disclosed under the law of its domicile, is filed with and made public by a stock exchange on which its securities trade, or is distributed to its shareholders.

[15] Former paragraph (a)(4) has been redesignated as paragraph (a)(5). *See* Section II.F., *infra*.

[16] The Commission has added the requirement that the broker-dealer obtain the information from sources which it has a reasonable basis for believing are reliable. The requirement is currently included in redesignated paragraph (a)(5) of the Rule.

[17] Form F–6 is the form available for the registration of ADRs under the Securities Act of 1933 ("Securities Act").

[18] Form F–6 supersedes on a prospective basis Forms C–3 and S–12 for the registration of American depositary shares under the Securities Act. *See* Securities Act Release No. 6459 (March 18, 1983), 48 FR 12346 (March 24, 1983). Accordingly, certain depositary shares that were registered on Form C–3 or S–12 at the time of adoption of Form F–6 may continue to be offered under those forms. In addition, the staff has permitted, subject to certain conditions, Form F–6 to be used to duplicate ADR facilities for those foreign securities which were registered on Form C–3 or S–12 and which are still being offered. Unlike Form F–6, Form S–12 did not require that the foreign private issuer of the security underlying the ADR be a reporting company or have perfected the information-supplying exemption under Rule 12g3–2(b). As such, a broker-dealer cannot automatically assume that the foreign private issuer of the deposited shares is a reporting company or has complied with the requirements of Rule 12g3–2(b). Irrespective of the form on which the foreign issuer's securities are registered, a broker-dealer must have in its files the information specified by the Rule before publishing a quotation for the ADR.

[19] A broker-dealer that obtains from the Commission, at or about the time of submission of the quotation to the quotation medium, the information supplied by the foreign issuer under Rule 12g3–2(b) can assume that such information is current and complete for purposes of the Rule, so long as the foreign issuer's name appears on the

Continued

One commentator, a market maker in foreign securities and ADRs, objected to the proposed amendments on the ground that a U.S. market maker's quotation for a foreign security or ADR is never an "initial" quotation or "resumption", because such quotes are a continuation of the price prevailing abroad for that security or for the foreign security underlying the ADR. According to this commentator, a U.S. market maker in foreign securities or ADRs thus has no need to collect or rely on Rule 15c2–11 information to establish a quotation for a foreign security. The commentator suggested that the Rule's information maintenance requirement should be directed instead to retail brokerage houses that offer investment advice, because the recommendation of those firms should be based on due diligence-type analysis and supported by adequate information contained in firm files. The Commission nonetheless believes that the amendments are necessary to assure that broker-dealers introducing a quotation for a foreign security or ADR which trades on an infrequent basis have on hand fundamental information about the foreign issuer as a constraint against the publication of an arbitrary quotation. As a significant number of foreign securities and ADRs are quoted on NASDAQ and therefore will qualify for the exemption from the Rule adopted today for NASDAQ securities, these amendments will affect only a limited category of foreign securities and ADRs, *i.e.*, those that are quoted exclusively in an inter-dealer quotation medium other than NASDAQ.[20]

E. Review of Paragraph (f)(3): The "Piggyback" Provision

Paragraph (f)(3), the so-called "piggyback" provision, excepts from the Rule the publication or submission of any quotation that has been the subject of both bid and asked quotations at specified prices for a minimum of twelve days during the prior thirty calendar days, so long as no more than four consecutive business days have elapsed without such two-way quotes. The piggyback provision presumes that the quotation of a security subject to regular and frequent two-sided market making will reflect independent supply and demand forces, thereby indicating that sufficient information about the issuer of the quoted security is reaching the marketplace.

In the Proposing Release, the Commission indicated its intention to evaluate the framework of, and compliance practices under, the piggyback provision to determine whether any revision of the terms of that provision would be appropriate. Commentators generally did not focus on the piggyback provision other than to express their lack of knowledge about significant compliance problems under the provision, although two commentators recommended that unpriced entries be permitted to be taken into account in determining the existence and number of quotations during the applicable period. Since unsolicited customer indications of interest may be represented by unpriced entries, extending the piggyback provision to include unpriced entries presumably would permit a broker-dealer to rely on an entry that was not supported by information about the security's issuer. In light of that possibility and in light of the historical basis for the piggyback provision, *i.e.*, that regular and continual priced quotations are an appropriate substitute for information about the issuer which would otherwise be relevant in establishing a quotation, the Commission does not believe it is appropriate in all circumstances to allow market makers to piggyback onto unpriced entries. The piggyback provision is amended, however, to permit market makers attempting to establish eligibility for the piggyback exception to take into account unpriced entries, other than those that represent an unsolicited customer indication of interest, if the inter-dealer quotation system specifically identifies unsolicited customer indications of interest.

The piggyback provision is also amended to accommodate the position of the market maker who, having commenced market making pursuant to the piggyback provision, would otherwise become subject to the Rule's information maintenance requirement if the firm inserting the priced quotation dropped out of the inter-dealer quotation system. The amendment permits a dealer who has begun publishing quotations in reliance on the piggyback provision to continue to rely on that exception for as long as it remains a market maker in the particular security. Of course, once the dealer ceases continuously to submit or publish a quotation for that security, it will become subject to the Rule's provisions if it reenters the inter-dealer quotation system.[21]

The Commission, however, continues to be interested in receiving the observations of those persons experienced with the operation of, and compliance practices under, the piggyback provision.

F. Information Requirement of Redesignated Paragraph (a)(5)

Redesignated paragraph (a)(5) [22] was designed principally to regulate the quotation of securities of small nonreporting companies that have not conducted recent public offerings. In the Proposing Release, the Commission noted that broker-dealers may have had the opportunity to rely on that paragraph for reporting and exempt insurance companies, including situations where the information requirement of paragraph (a)(3) [23] could

latest annual list published by the Commission of foreign issuers qualifying for the Rule 12g3–2(b) exemption or on any periodic update of such list. *See, e.g.*, Securities Exchange Act Release No. 20265 (October 6, 1983), 48 FR 46674 (October 13, 1983). If it is unclear whether a foreign private issuer has satisfied the Rule 12g3–2(b) exemptive conditions, the broker-dealer can contract the Commission's Office of International Corporate Finance, Division of Corporation Finance, for further information. In addition, a broker-dealer obtaining Rule 12g3–2(b) material from the Commission can assume that information is true and correct for purposes of the Rule, unless it knows or has reason to believe otherwise. Whenever a broker or dealer acquires the Rule 12g3–2(b) informations from non-Commission sources, the possibility exists that such information will not be current or will be materially different from the documentation furnished to the Commission by the foreign issuer. A broker-dealer that acquires the Rule 12g3–2(b) information from a source other than the Commission is not precluded, however, form assuming that the information is current as well as true and correct, unless it knows or has reason to believe to the contrary. *See* n.16, *supra*.

[20] Under recent revisions to Rule 12g3–2, securities of foreign issuers quoted on NASDAQ will no longer qualify for the exemption from the registration requirement of Section 12(g) of the Act that is available under paragraph (b) of that rule. Securities of non-Canadian foreign issuers which, as of October 5, 1983, are in compliance with Rule 12g3–2(b) and are quoted on NASDAQ may continue to qualify for the registration exemption indefinitely. After January 2, 1986, Canadian issuers whose securities are quoted on NASDAQ will have to comply with Section 12(g) registration requirements. *See* Securities Exchange Act Release No. 20264 (October 6, 1983), 48 FR 46736 (October 14, 1983).

[21] The staff of the Division of Market Regulation will interpret this amendment to permit market makers who have regularly published a priced or unpriced quotation respecting a security otherwise in compliance with the Rule as of the effective date of the amendments, to continue to publish such quotations without maintaining the specified information, until they stop and then seek to recommence quoting the security in an inter-dealer quotation system or making a market therein.

[22] As previously noted, paragraph (a)(4) was formerly designated as paragraph (a)(4). A few technical changes have been made in the Rule to reflect this redesignation. Paragraph (a)(5) specifies 16 fundamental items of information pertaining to the issuer and the quoted security, including recent balance sheet plus profit and loss and retained earnings statements, that a broker-dealer must have in its records before initiating or resuming a quotation.

[23] Under paragraph (a)(3), a broker-dealer submitting a quotation for a reporting company must have on hand the issuer's most recent annual report (or annual statement in the case of an exempt

Continued

not be satisfied because the issuer was delinquent in meeting its reporting obligations under the Act. Accordingly, the Commission proposed to limit the availability of the information provisions of paragraph (a)(5) to the quotation of a security whose issuer is not required to file periodic reports, or is not an exempt insurance company, under the Act. The proposal was published for public comment out of concern that the periodic information a reporting company or an exempt insurance company must disclose to shareholders or the public should be available to a broker-dealer as a predicate to the introduction of a quotation for a security of that issuer.

Commentators generally opposed the proposed amendment. Two commentators remarked that the proposal in effect could have imposed and indirect, indefinite trading suspension for the securities of any issuer that failed to comply with its statutory reporting obligations. Another commentator disapproved of the proposed amendment on the ground that the Commission's responsibility to assure an issuer's compliance with the Act's reporting requirements improperly would have been shifted to broker-dealers. Several commentators noted that the proposal disregarded those cases in which an issuer's failure to file required material on time was insubstantial in impact or technical in nature.

The Commission appreciates the very valid concerns raised by the commentators. [24] Nonetheless, it is appropriate to establish some limitation on the availability of paragraph (a)(5) consistent with the original, albeit unstated, objective of that paragraph. The Commission has attempted to strike a balance between these concerns and is adopting an amendment to paragraph (a)(5) stating that its provisions are not applicable to the quotation of securities of an issuer included in paragraph (a)(3), unless a statement or report of that issuer which is necessary under paragraph (a)(3) for the introduction of a quotation is not reasonably available to the broker or dealer. Any such statement or report is deemed to be "reasonably available" for purposes of paragraph (a)(5) when it is filed with the Commission.

Under the amendment, a broker-dealer initiating a quotation for a security of a reporting company or an exempt insurance company is expected to have in its files the information required under paragraph (a)(3). The amendment recognizes that in the case of reporting companies, which are subject to a Congressionally-mandated system of continuous disclosure, a broker-dealer ought to have in its possession certain comprehensive annual and periodic reports (or statements in the case of exempt insurance companies) in order to submit or publish a quotation. Only when the paragraph (a)(3) information is not reasonably available may a broker-dealer substitute the information required by paragraph (a)(5).

III. Regulatory Flexibility Act Considerations

The Commission has prepared an Initial Regulatory Flexibilitly Analysis and a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 and 604, respectively, regarding amendments to Rule 15c2–11. No comments were received on the Commission's Initial Regulatory Flexibility Analysis, although several commentators identified various benefits or burdens they believed were associated with the Rule and the proposed amendments. The Final Regulatory Flexibility Analysis states that the amendment subjecting unpriced entries to the Rule reduces the likelihood that brokers and dealers can engage in fraudulent and manipulative activity through the regular publication of unpriced entries free of the Rule's requirements. It further notes that any additional recordkeeping burden imposed by that amendment should be ameliorated somewhat by adoption of another amendment removing from the Rule quotations represented by unsolicited customer indications of interest. The Final Regulatory Analysis also indicates that extending the Rule to cover the publication of quotations for foreign securities and ADRs ensures that brokers and dealers have sufficient information upon which to evaluate initial quotations for those securities. Additionally, the Final Regulatory Flexibility Analysis points out that the amendment allowing a broker or dealer to look to the information retention requirement of paragraph (a)(5) in the case of a reporting company whose required reports are not reasonably available should alleviate concerns that the amendment, as proposed, might have resulted in an indirect, indefinite trading halt in the securities of certain issuers delinquent in their reporting obligations. Finally, it states that the exception for NASDAQ-quoted securities has a beneficial regulatory impact to the extent that broker-dealers quoting a NASDAQ stock will no longer have to maintain the information specified by the Rule from the time of initiation or resumption of the quotation until the piggyback exception becomes available.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Nancy J. Burke, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202–272–2848).

IV. Effects on Competition

Section 23(a)(2) of the Act [25] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the amendments to Rule 15c2–11 in light of standards cited in section 23(a)(2) and believes for the reasons stated in this release that adoption of the amendments will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

V. Statutory Basis and Text of Rule Amendments

Pursuant to sections 3, 10, 15, 17 and 23, 15 U.S.C. 78(c), 78j, 78*o*, 78q, and 78w, the Commission hereby amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

By amending § 240.15c2–11, by revising paragraphs (a)(1), (e)(3), (f)(2), and (f)(3); redesignating paragraph (a)(4) as (a)(5) and adding a new sentence at the end of paragraph (a)(5); in paragraph (d), redesignating each reference to paragraph (a)(4) as paragraph (a)(5); in

insurance company), as well as any subsequent periodic reports file with the Commission.

[24] The proposed amendment was not intended to serve as a means to force delinquent issuers to meet their statutory reporting obligations. In fact, the Commission already has several enforcement remedies available to it in the event an issuer has failed to file with the Commission on a timely basis required reports under the Act. For example, under Section 12(j) of the Act, the Commission is empowered to revoke a security's registration, if the issuer is found to have failed to comply with any provision of the Act or rules thereunder. Section 21(d) of the Act authorizes the Commission to seek to enjoin acts or practices prohibited by the Act or rules thereunder and to refer evidence concerning such violations to the U.S. Department of Justice for possible criminal proceedings. Under Section 21(e) of the Act, the Commission has the authority to seek orders requiring compliance with the provisions of the Act and rules thereunder.

[25] 15 U.S.C. 78w(a)(2)

the introductory text of paragraph (g), redesignating the reference to paragraph (a)(4) as paragraph (a)(5), and in paragraph (g)(2), redesignating the reference to paragraph (a)(4) as paragraph (a)(5); and adding new paragraphs (a)(4), (e)(4), and (f)(5) to read as follows:

§ 240.15c2-11 Initiation or resumption of quotations without specified information.

(a) * * *

(1) The issuer has filed a registration statement under the Securities Act of 1933, other than a registration statement on Form F-6, which became effective less than 90 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium, *Provided* That such registration statement has not thereafter been the subject of a stop order which is still in effect when the quotation is published or submitted, and such broker or dealer has in his records a copy of the prospectus specified by section 10(a) of the Securities Act of 1933;

* * * * *

(4)(i) The issuer is exempt from section 12(g) of the Act by reason of compliance with the provisions of § 240.12g3-2(b), and

(ii) The broker or dealer wishing to submit for publication a quotation for such security has in his records, and makes reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer, the information furnished to the Commission pursuant to § 240.12g3-2(b) since the beginning of the issuer's last fiscal year, which the broker or dealer has no reasonable basis for believing is not true and correct and which was obtained by him from sources that he has a reasonable basis for believing are reliable; or

(5) * * * This paragraph (a)(5) shall not apply to any security of an issuer included in paragraph (a)(3) of this section unless a report or statement of such issuer described in paragraph (a)(3) of this section is not reasonably available to the broker or dealer. A report or statement of an issuer described in paragraph (a)(3) of this section shall be "reasonably available" when such report or statement is filed with the Commission.

* * * * *

(e) * * *

(3) Except as otherwise specified in this rule, "quotation" shall mean any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that he wishes to advertise his general interest in buying or selling a particular security.

(4) "Issuer," in the case of quotations for American Depositary Receipts, shall mean the issuer of the deposited shares represented by such American Depositary Receipts.

(f) * * *

(2) The publication or submission by a broker or dealer, solely on behalf of a customer (other than a person acting as or for a dealer), of a quotation that represents the customer's indication of interest and does not involve the solicitation of the customer's interest; *Provided, however,* That this paragraph (f)(2) shall not apply to a quotation consisting of both a bid and an offer, each of which is at a specified price, unless the quotation medium specifically identifies the quotation as representing such an unsolicited customer interest.

(3)(i) The publication or submission, in an interdealer quotation system that specifically identifies as such unsolicited customer indications of interest of the kind described in paragraph (f)(2) of this section, of a quotation respecting a security which has been the subject of quotations (exclusive of any identified customer interests) in such a system on each of at least 12 days within the previous 30 calendar days, with no more than 4 business days in succession without a quotation; or

(ii) The publication or submission, in an interdealer quotation system that does not so identify any such unsolicited customer indications of interest, of a quotation respecting a security which has been the subject of both bid and ask quotations in an interdealer quotation system at specified prices on each of at least 12 days within the previous 30 calendar days, with no more than 4 business days in succession without such a two-way quotation;

(iii) A dealer acting in the capacity of market maker, as defined in section 3(a)(38) of the Act, that has published or submitted a quotation respecting a security in an interdealer quotation system and such quotation has qualified for an exception provided in this paragraph (f)(3), may continue to publish or submit quotations for such security in the interdealer quotation system without compliance with this section unless and until such dealer ceases to submit or publish a quotation or ceases to act in the capacity of market maker respecting such security.

* * * * *

(5) The publication or submission of a quotation respecting a security that is authorized for quotation in an interdealer quotation system sponsored and governed by the rules of a registered securities association, and such authorization is not suspended, terminated or prohibited.

* * * * *

By the Commission.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-30014 Filed 11-15-84; 8:45 am]
BILLING CODE 8010-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP OH5263/R659; PH-FRL 2694-8]

Tolerances for Pesticides in Food; Ethephon

Correction

In FR Doc. 84-27234, beginning on page 40575, in the issue of Wednesday, October 17, 1984, make the following corrections:

On page 40576, column one, under **"SUPPLEMENTARY INFORMATION"**, line 6, "choloroethyl) phosphomic" should read "chloroethyl) phosphonic".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Sodium Hyaluronate Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pharmacia Laboratories providing for safe and effective use of sodium hyaluronate injection in treating horses for joint dysfunction due to noninfectious synovitis associated with equine osteoarthritis. The regulations are further amended to add the firm to the list of sponsors of approved NADA's.

EFFECTIVE DATE: November 15, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra Woods, Center for Veterinary Medicine (HFV-114), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Pharmacia Laboratories, Division of Pharmacia, Inc., Piscataway, NJ 08854, is sponsor of NADA 112–048 which provides for intra-articular injection of a 1 percent (10 milligrams per milliliter) solution of sodium hyaluronate for treating horses for joint dysfunction dute to noninfectious synovitis associated with equine osteoarthritis. The application is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary. The regulations are further amended to add Pharmacia Laboratories to the list of sponsors of approved NADA's in 21 CFR 510.600(c).

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

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii)(*a*)) may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

21 CFR Part 522

Animal drugs—injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. In Part 510, § 510.600 is amended in paragraph (c)(1) by adding a new sponsor alphabetically and in paragraph (c)(2) by adding a new sponsor numerically to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
. . . . .	
Pharmacia Laboratories, Division of Pharmacia, Inc., Piscataway NJ 08854	000016
. . . . .	

(2) * * *

Drug labeler code	Firm name and address
. . . . .	
000016	Pharmacia Laboratories, Division of Pharmacia, Inc., Piscataway, NJ 08854.
. . . . .	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FOR NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

2. In Part 522, by adding new § 522.1145 to read as follows:

§ 522.1145 Sodium hyaluronate injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 10 milligrams of sodium hyaluronate.

(b) *Sponsor.* See No. 000016 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Small and medium-size joints (carpal, fetlock)—20 milligrams; larger joint (hock)—40 milligrams.

(2) *Indications for use.* Treatment of joint dysfunction in horses due to noninfectious synovitis associated with equine osteoarthritis.

(3) *Limitations.* For intra-articular injection in horses only. Treatment may be repeated at weekly intervals for a total of three treatments. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. November 15, 1984.

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

Dated: November 7, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84–29870 Filed 11–14–84; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[FAP 3H5413/R693; OPP–FRL–2650–5]

Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency; 2-[1-(Ethoxyimino) Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexene-1-One

Correction

In FR Doc. 84–20985, appearing on page 31667, in the issue of Wednesday, August 8, 1984, make the following correction:

On the same page in column two, under **"SUPPLEMENTARY INFORMATION"**, line four, "29543" should read "49543".

BILLING CODE 1505–01–M

HEALTH AND HUMAN SERVICES

21 CFR PART 573

[Docket No. 82F–0232]

Food Additives Permitted in Feed and Drinking Water of Animals; Salts of Volatile Fatty Acids

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for safe use of a blend of ammonium or calcium salts of certain mixed volatile fatty acids as a nutrient supplement in dairy cattle feed. This action responds to a petition filed by Eastman Kodak Co.

DATES: Effective November 15, 1984; objections by December 17, 1984.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV–221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5362.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of June 19, 1984 (49 FR 25042), FDA announced that Eastman Chemicals Division, Eastman Kodak Co., Kingsport, TN 37662, had amended its original food additive petition (FAP 2193) to propose that the food additive regulations be amended to provide for safe use of a blend of ammonium or calcium salts of certain mixed volatile fatty acids as a nutrient supplement in dairy cattle feed. The notice that announced the filing of

the firm's original petition published in the **Federal Register** of August 3, 1982 (47 FR 33556). Both notices designate new § 573.190 *Ammonium salts of mixed volatile fatty acids blend* to contain the provisions for the products' use. Upon further consideration, however, FDA decided that a more appropriate section number and title is § 573.914 *Salts of volatile fatty acids*. FDA has evaluated the data submitted in the petition, the amendment to the petition, and other relevant material and concluded that Part 573 should be amended to provide for safe use of ammonium or calcium salts of mixed volatile fatty acids as set forth below.

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine (address above) by appointment with the information contact person listed above. As provided in § 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(iv) and (g)) may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.61), Part 573 is amended by adding new § 573.914, to read as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

§ 573.914 Salts of volatile fatty acids.

(a) *Identity.* The food additive is a blend containing the ammonium or calcium salt of isobutyric acid and the ammonium or calcium salts of a mixture of 5-carbon acids—isovaleric, 2-methylbutyric, and *n*-valeric.

(b) *Specifications.* The additive contains ammonium or calcium salts of volatile fatty acids and shall conform to the following specifications:

(1) Ammonium salts:

Components	Amount
Ammonium salts of mixed 5-carbon acids (as identified in paragraph (a) of this section).	48 to 54 percent.
Ammonium salt of isobutyric acid	22 to 26 percent.
Water	28 percent maximum.
Ammonia	0.3 percent maximum.
Arsenic	<3 parts per million.
Heavy metals as lead	<10 parts per million.

(2) Calcium salts:

Components	Amount
Calcium salts of mixed 5-carbon acids (as identified in paragraph (a) of this section).	58 to 72 percent.
Calcium salt of isobutyric acid	26 to 34 percent.
Calcium hydroxide	3 percent maximum.
Water	14 percent maximum.
Arsenic	<3 parts per million.
Heavy metals as lead	<10 parts per million.

(c) *Use.* The additive is used or intended for use as a source of energy in dairy cattle feed.

(d) *Labeling.* The label and labeling of the additive in any feed, feed supplement, feed concentrate, feed premix, or liquid feed supplement prepared therefrom shall bear, in addition to other information required by the act, the following:

(1) The name of the additive.

(2) Adequate directions for use, including statements expressing maximum use levels. For ammonium salts of volatile fatty acids, the statements: "Not to exceed 120 grams per head per day thoroughly mixed in dairy cattle feed as a source of energy." For calcium salts of volatile fatty acids, the statement: "Not to exceed 135 grams per head per day thoroughly mixed in dairy cattle feed as a source of energy."

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 17, 1984 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be indentified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective November 15, 1984.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: November 5, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-29871 Filed 11-14-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 205, 207, 213, 220, 221, 232, 238 and 250

[Docket No. R-84-1213; FR-1888]

Revising References to Superseded Department of Labor Regulations

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

ACTION: Final rule.

SUMMARY: This final rule revises HUD regulations that refer to superseded Department of Labor regulations relating to labor standards and wage requirements.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication but not before further notice of the effective date is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Stuart Davis, Executive Assistant to the Assistant Secretary for Housing, Room 9100, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-6606. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rule revises several HUD regulations that reference Department of Labor (DOL) superseded regulations relating to labor standards and wage requirements (24 CFR Part 5).

Notice and public procedure are considered unnecessary because HUD's revising of its regulations to reflect updated DOL regulations is an internal administrative matter that will not affect any person's substantive rights. Accordingly, the Department has determined that notice and public procedure are unnecessary and this document is being published as a final rule.

HUD's revising of its regulations to reflect updated DOL regulations is the kind of internal administrative procedure that 24 CFR 50.20(k) excludes from the requirements in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 10, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule was listed as Item Number 1 in the Department's Semiannual Agenda of Regulations published on April 19, 1984 (48 CFR 15903 and 15910) under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

24 CFR Part 205

Community facilities, Mortgage insurance, Land development.

24 CFR Part 207

Mortgage insurance, Rental housing, Mobile home parks.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs—housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs; Health, Loan programs; Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 238

Insurance, Investments.

24 CFR Part 250

Intergovernmental relations, Low and moderate income housing, Mortgage insurance.

Accordingly, this rule amends 24 CFR Parts 205, 207, 213, 220, 221, 232, 238 and 250 as follows:

PART 205—[AMENDED]

1. Section 205.97 is revised to read as follows:

§ 205.97 Ineligible contractors.

No land development contract shall be entered into with a general contractor or subcontractor if such contractor or subcontractor (or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest) is on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

2. Section 205.100 is revised to read as follows:

§ 205.100 Ineligible advances.

Unless approved by the Commissioner, no advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor (or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest) was, on the date the contract or subcontract was executed, on the ineligible list established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

PART 207—[AMENDED]

3. Section 207.19 is amended by revising paragraphs (d)(1)–(3) to read as follows. The introductory text is shown for reader convenience.

§ 207.19 Required supervision of private mortgagors.

The following are the items which will be regulated or restricted, except in the case of mortgagors of the character described in § 207.17(b):

* * * * *

(d) Labor standards and prevailing wage requirements.

(1) Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable labor standards and provisions under 29 CFR Part 5.

(2) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

(3) No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list established by the Comptroller General under 29 CFR Part 5.

* * * * *

PART 213—[AMENDED]

4. In § 213.28, paragraphs (a), (b) and (c) are revised to read as follows:

§ 213.28 Labor standards and prevailing wage requirements.

(a) Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable labor standards and provisions of the regulations in 29 CFR Part 5.

(b) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

(c) No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such

contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list established by the Comptroller General under 29 CFR Part 5.

* * * * *

PART 220—[AMENDED]

5. In § 220.614, paragraphs (a), (b), and (c) are revised to read as follows:

§ 220.614 Prevailing wage requirements.

* * * * *

(a) *Labor standards.* Any contract or subcontract executed for the performance of constructing the improvements to the project shall comply with all applicable labor standards and provisions under 29 CFR Part 5.

(b) *Ineligible contractors.* No contract shall be entered into with a general contractor or any subcontractor for the construction of improvements, if such contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

(c) *Ineligible advances.* Unless approved by the Commissioner, no advance under the loan shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

* * * * *

PART 221—[AMENDED]

6. In § 221.538, paragraphs (a) (1), (2) and (3) are revised to read as follows:

§ 221.538 Applicability of prevailing wage requirements.

(a) * * *

(1) *Labor Standards.* Any contract, subcontract or building loan agreement executed for the performance of construction of the project shall comply with all applicable labor standards and provisions of the regulations in 29 CFR Part 5.

(2) *Ineligible contractors.* No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

(3) *Ineligible advances.* No advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General under 29 CFR Part 5.

* * * * *

PART 232—[AMENDED]

7. Section 232.70 is revised to read as follows:

§ 232.70 Labor standards.

Any contract, subcontract, or building loan agreement executed for the performance of construction of the project shall comply with all applicable standards and provisions of the regulations under 29 CFR Part 5.

8. Section 232.71 is revised to read as follows:

§ 232.71 Ineligible contractors.

No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

9. Section 232.72 is revised to read as follows:

§ 232.72 Ineligible advances.

Unless approved by the Commissioner, no advance under the mortgage shall be eligible for insurance after notification from the Commissioner that the general contractor or any subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest was, on the date the contract or subcontract was executed on the ineligible list, established by the Commissioner or by the Comptroller General under 29 CFR Part 5.

PART 238—[AMENDED]

10. In § 238.8, paragraphs (h) (1) and (2) are revised to read as follows:

§ 238.8 Project eligibility requirements.

* * * * *

(h)(1) Any contract or subcontract executed for the performance of construction of the project shall comply with all applicable labor standards and provisions under 29 CFR Part 5.

(2) No construction contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of the contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

* * * * *

PART 250—[AMENDED]

11. In § 250.132, paragraphs (a) (1) and (2) are revised to read as follows:

§ 250.132 Applicability of prevailing wage requirements.

(a) * * *

(1) *Labor standards.* Any contract, subcontract, or building loan agreement executed for the performance of construction or rehabilitation of the project shall comply with all applicable labor standards and provisions under 29 CFR Part 5.

(2) *Ineligible contractors.* No construction or rehabilitation contract shall be entered into with a general contractor or any subcontractor if such contractor or any such subcontractor or any firm, corporation, partnership or association in which such contractor or subcontractor has a substantial interest is included on the ineligible list of contractors or subcontractors established and maintained by the Comptroller General under 29 CFR Part 5.

* * * * *

Authority: Sec. 7(d), Department of HUD Act, 3535(d).

Dated: November 6, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-29975 Filed 11-14-84; 8:45 am]

BILLING CODE 4210-27-M

Government National Mortgage Association

24 CFR Part 300

[Docket No. N-84-1473; FR-2043]

List of GNMA Attorneys-in-Fact

AGENCY: Government National Mortgage Association, HUD.

ACTION: Rule-related notice.

SUMMARY: This document updates the current list of persons appointed attorneys-in-fact by the Government National Mortgage Association (GNMA). Attorneys-in-fact are authorized to act for GNMA by executing documents in its name in conjunction with servicing GMNA's mortgage purchase programs. These appointments assist GNMA in carrying out its responsibilities under the National Housing Act.

EFFECTIVE DATE: November 15, 1984.

FOR FURTHER INFORMATION CONTACT: John Maxim, Associate General Counsel, Insured Housing and Finance, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-6274. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Government National Mortgage Association (GNMA) periodically approves staff members of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) to be delegated signatory authority to act in GNMA's behalf as attorneys-in-fact.

Until recently, lists of persons appointed to act have appeared in the Code of Federal Regulations (see 24 CFR 300.11 (c) and (d), 1983 edition). In related documents published on August 12, 1983 (see 48 FR 36572, 36573) GNMA announced that it was removing these lists from the CFR, changing the procedure of announcing appointments to a notice document, and publishing a complete list of persons currently appointed to act as attorneys-in-fact. The rule removing the lists from the CFR, as well as the complete list of attorneys-in-fact, was effective October 11, 1983. Additional changes to the list of persons appointed attorneys-in-fact were published on December 29, 1983 (see 48 FR 57371), May 29, 1984 (49 FR 22278) and on August 27, 1984 (49 FR 33872).

This notice today announces changes to the list of persons authorized to act as attorneys-in-fact. The changes include additions to and deletions from the Federal National Mortgage Association list. To enhance the usability of these notices, the Department has decided to republish the entire list of attorneys-in-fact each time changes are made.

Accordingly, the following lists represent all persons currently appointed as attorneys-in-fact delegated signatory authority to act in GNMA's behalf:

I. Staff members of the Federal National Mortgage Association, a government-sponsored private corporation, appointed attorneys-in-fact.

Name and Region

Leo E. Abueg, Los Angeles, CA
Robert E. Allen, Los Angeles, CA
Angelina P. Alleva, Philadelphia, PA
Ellen W. Allison, Atlanta, GA
Pam Andrus, Los Angeles, CA
Victoria L. Arrington, Chicago, IL
Glenn T. Austin, Jr., Atlanta, GA
J. J. Bacchus, Atlanta, GA
Irene S. Baggio, Philadelphia, PA
Darlene Bagley, Atlanta, GA
J. C. Bellinger, Atlanta, GA
J. M. Benavides, Dallas, TX
Frances E. Bennett, Atlanta, GA
James H. Benson, Los Angeles, CA
E. N. Biggerstaff, Atlanta, GA
James R. Blakley, Los Angeles, CA
Norman T. Bolas, Los Angeles, CA
W. R. Bowen, Los Angeles, CA
W. James Bradley, Washington, D.C.
Joseph E. Brody, Chicago, IL
Craig J. Bromann, Chicago, IL
Rosemary M. Brown, Washington, D.C.
Burleigh O. Burshem, Washington, D.C.
Rena L. Busby, Los Angeles, CA
Donna M. Cabrera, Los Angeles, CA
Dennis J. Campbell, Philadelphia, PA
E. P. Carr, Atlanta, GA
Loretta Casey, Philadelphia, PA
James S. Cash, Atlanta, GA
Robert A. Chambers, Atlanta, GA
Heinrich F. Charles, Los Angeles, CA
Russell B. Clifton, Washington, D.C.
John M. Coan, Washington, D.C.
Vincent Colletti, II, Philadelphia, PA
Bettye Cook, Los Angeles, CA
Diane E. Cozad, Los Angeles, CA
Jean V. Cunniff, Chicago, IL
Edward F. Czubernat, Chicago, IL
Nitin J. Dave, Atlanta, GA
John C. Diebel, Chicago, IL
James E. Domenico, Chicago, IL
Lawrence J. Dondero, Jr., Philadelphia, PA
Elizabeth A. Downing, Los Angeles, CA
Samuel A. Duca, Philadelphia, PA
J. Ellis Dykes, Atlanta, GA
Joseph R. Elred, Philadelphia, PA
Julieta England, Los Angeles, CA
David J. Evans, Atlanta, GA
R. Douglas Ezzell, Atlanta, GA
Leon Fine, Philadelphia, PA
Pamela K. Fite, Atlanta, GA
Carlton T. Foster, Jr., Atlanta, GA
Robert R. Foster, Philadelphia, PA
Jimmy L. Gallahar, Atlanta, GA
Hettye D. Gates, Atlanta, GA
Robert R. Glinski, Philadelphia, PA
James D. Grady, Jr., Philadelphia, PA
John J. Hagerty, Philadelphia, PA
Ann B. Hamilton, Philadelphia, PA
Mark S. Haney, Los Angeles, CA
Robert E. Haren, Chicago, IL
Charles W. Harvey, Jr., Philadelphia, PA
Ronald W. Harwig, Chicago, IL
John R. Hayes, Chicago, IL
B. J. Hendryk, Dallas, TX
C. W. Haptinstall, Los Angeles, CA
J. W. Haester, Jr., Atlanta, GA
JoAnne Holbert, Los Angeles, CA
R. R. Hoist, Los Angeles, CA
Violet L. Howser, Dallas, TX
George L. Huckabee, Dallas, TX
Carmen I. Huertas, Los Angeles, CA
Arnold L. Hufstetler, Atlanta, GA
Robert A. Hunter, Atlanta, GA
Louise E. Isabel, Chicago, IL
Stuart J. Jaffee, Philadelphia, PA
William S. Jones, Atlanta, GA
Ed G. Kendrick, Dallas, TX
Arthurine C. Kent, Los Angeles, CA
Carol King, Los Angeles, CA
Thomas L. Kinney, Washington, D.C.
John H. Kline, Jr., Philadelphia, PA
Michael S. Koch, Chicago, IL
Denise Lee, Philadelphia, PA
Alfredo S. Loyola, Chicago, IL
Robert J. Mahn, Washington, D.C.
Noel J. Mangan, Chicago, IL
P. Jack Maniscalco, Dallas, TX
Susan McMahon, Chicago, IL
Allen P. Miller, Los Angeles, CA
Doris A. Morrow, Chicago, IL
Frederich W. Mowatt, Washington, D.C.
Charleen N. Munson, Philadelphia, PA
Randolph C. Nail, Jr., Chicago, IL
Harbir S. Narang, Los Angeles, CA
Vincent H. Nelson, Atlanta, GA
Brenda J. Newbill, Chicago, IL
Philip R. Nichols, Jr., Philadelphia, PA
James W. Noack, Los Angeles, CA
B. J. Odom, Atlanta, GA
Zach Oppenheimer, Philadelphia, PA
Leslie A. Parsons, Los Angeles, CA
Dale L. Pea, Dallas, TX
Norman H. Peterson, Los Angeles, CA
Kathryn M. Phillips, Atlanta, GA
Robert G. Pike, Atlanta, GA
M. Kay Pollak, Los Angeles, CA
Douglass M. Porter, Washington, D.C.
Norman M. Reid, Los Angeles, CA
A. E. Rodenberger, Los Angeles, CA
Samuel D. Russell, Dallas, TX
Tim J. Ryan, Chicago, IL
E. L. Schreiber, Dallas, TX
Frank L. Scrivano, Dallas, TX
R. L. Shanteau, Atlanta, GA
Patricia L. Shaw, Chicago, IL
Mary Simpson, Dallas, TX
M. Faith Smith, Philadelphia, PA
Samuel M. Smith, III, Atlanta, GA
Susan T. Smith, Dallas, TX
Mary Lou Stellman, Dallas, TX
Roger Stewart, Washington, D.C.
Robert F. Sumbry, Atlanta, GA
T. J. Swanson, Jr., Atlanta, GA
Morton C. Swichkow, Dallas, TX
Robert N. Tanabe, Los Angeles, CA
Leta L. Terrell, Dallas, TX
Geri C. Thomas, Los Angeles, CA
Jimmie L. Thomas, Dallas, TX
Carmeleta Turner, Dallas, TX
Ruth C. Turner, Los Angeles, CA
J. H. Van House, Atlanta, GA
Mary E. Voight, Los Angeles, CA
Esther O. Walder, Philadelphia, PA
Erlinda C. Weaver, Los Angeles, CA

Nancy L. Webster, Chicago, IL
Edward W. Wendell, Chicago, IL
James H. Whitehead, Atlanta, GA
John Wilson, Philadelphia, PA
W. E. Yeager, Atlanta, GA
Dick A. Yockey, Los Angeles, CA

II. Staff members of the Federal Home Loan Mortgage Corporation, created under the laws of the United States, appointed attorneys-in-fact.

Name and Region

William T. Bings, Washington, D.C.
Philip R. Brinkerhoff, Washington, D.C.
Jerry Brooks, Atlanta, GA
Michael Coffey, Dallas, TX
Douglas R. Cottrell, Atlanta, GA
Kenneth Coulter, Los Angeles, CA
George E. Delgado, Arlington, VA
James L. Garrison, Arlington, VA
C. Gordon Gray, Chicago, IL
Ken Halterman, Dallas, TX
Philip N. Harrington, Washington, D.C.
Carl Hillis, Dallas, TX
John Horseman, Sr., Washington, D.C.
Victor H. Indiek, Washington, D.C.
David S. Latimore, Atlanta, GA
Leon L. Linkroum, Los Angeles, CA
John E. Lott, Chicago, IL
Peter R. McNulty, Arlington, VA
J. Michael Materie, Atlanta, GA
Walter P. Moenning, Jr., Chicago, IL
Ronald Morck, Atlanta, GA
Randall M. Nay, Dallas, TX
Jerry C. Nelson, Dallas, TX
Robert K. Ostengaard, Los Angeles, CA
Paul Quinn, Denver, CO
F. Michael Salb, Arlington, VA
Kenneth J. Sandin, Atlanta, GA
Fred Schwartz, Chicago, IL
Stu Strand, Los Angeles, CA
Ronald D. Struck, Washington, D.C.
Melvin L. Taylor, Seattle, WA
William R. Thomas, Jr., Dallas, TX
Glenn Vaupel, Los Angeles, CA
William J. Verant, Los Angeles, CA
Edward Voss, Chicago, IL
Clifford A. Walters, Chicago, IL

Dated: November 6, 1984.

Warren A. Lasko,

Executive Vice President.

[FR Doc. 84-29974 Filed 11-14-84; 8:45 am]
BILLING CODE 4210-32-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning December 1, 1984. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan adminstrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after December 1, 1984, and will enable the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Appendix B of the regulation is again amended.

EFFECTIVE DATE: December 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mrs. Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202-254-6476 (202-254-8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 28, 1981, the PBGC published a final regulation on Valuation of Plan Benefits in Non-multiemployer Plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1984), sets forth the methods for valuing plan benefits of terminating non-multiemployer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended.* The regulation contains formulas for valuing different types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1984 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods from September 2, 1974 through July 1, 1984. In July, August, and October of 1984, the PBGC published new rates and factors for plans terminating during the months of August through November of 1984 (49 FR 28551, 49 FR 32573, and 49 FR 40161).

At this time, changes in the financial and annuity markets require a decrease in the rates used for valuing benefits. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after December 1, 1984, which set reflects a decrease of ¼ percent in the interest rate to 10 percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as PBGC publishes another amendment concerning them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after December 1, 1984, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment to the final regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

PART 2619—[AMENDED]

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of

Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 reads as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, and 4062(b)(1)(A), Pub. L. 93-406, 88 Stat. 1004, 1020, 1025, 1029 (1974) as amended by Secs. 403(1), 403(d), and 402(a)(7), Pub. L. 96-364, 94 Stat. 1302, 1301, and 1299 (1980) (29 U.S.C. 1302, 1341, 1344, 1362).

2. Rate Set 51 of Appendix B is revised and Rate Set 52 of Appendix B is added to read as follows:

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_v" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date			Immediate annuity rate (%)	Deferred annuities				
	On or after	and	before		k_1	k_2	k_3	n_1	n_2
*	*	*	*	*	*	*	*	*	*
51	Nov. 1, 1984		Dec. 1, 1984	10.25	1.0950	1.0825	1.0400	7	8
52	Dec. 1, 1984			10.00	1.0925	1.0800	1.0400	7	8

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-29830 Filed 11-14-84; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-84-27]

Drawbridge Operation Regulations; New Pass FL

Correction

In FR Doc. 84-28801 beginning on page 43953 in the issue of Thursday, November 1, 1984, make the following correction: In the third column, **EFFECTIVE DATE**, second line, "December 3, 1984" should read "November 1, 1984".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Cost of Living Adjustments

AGENCY: Veterans Administration.

ACTION: Notice of Cost of Living Adjustments.

SUMMARY: This document corrects a reference to a proposed rulemaking which appeared in the preamble to the notice which was published October 31, 1984 at 49 FR 43940.

FOR FURTHER INFORMATION CONTACT: Celia Fasone, Paperwork Management and Regulations Service, (202) 389-2340.

Dated: November 9, 1984.

Nancy C. McCoy,

Chief, Directives Management Division.

Accordingly, the Veterans Administration is correcting the "Summary" portion of the notice to read as follows:

SUMMARY: As required by law the VA is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1984. The benefit rates and income limitations affected by these COLAs are included in §§ 3.23 to 3.26 and 3.262 to title 38 CFR. An amendment to those sections is upcoming.

[FR Doc. 84-30000 Filed 11-14-84; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 10

Express Mail International Service to Venezuela

AGENCY: Postal Service.

ACTION: Final action on Express Mail International Service to Venezuela.

SUMMARY: Pursuant to an agreement with the postal administration of Venezuela the Postal Service intends to begin Express Mail International Service with Venezuela at postage rates indicated in the table below. Service is scheduled to begin on December 14, 1984.

EFFECTIVE DATE: December 14, 1984.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, (202) 245-4414.

SUPPLEMENTARY INFORMATION: By a notice published in the **Federal Register** on October 8, 1984 (49 FR 39573), the Postal Service announced that it was proposing to begin Express Mail International Service to Venezuela. Comments were invited on published rate tables, which are proposed amendments to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1), and which are to become effective on the date service begins. No comments were received. Accordingly, the Postal Service states that it intends to begin Express Mail International Service with Venezuela on December 14, 1984 at the rates indicated in the table below.

List of Subjects in 39 CFR Part 10

Foreign relations, Postal Service.

VENEZUELA: EXPRESS MAIL INTERNATIONAL SERVICE

Custom designed service;[1] [2] up to and including		On demand service;[3] up to and including	
Pounds	Rate	Pounds	Rate
1	$27.00	1	$19.00
2	29.90	2	21.90
3	32.80	3	24.80
4	35.70	4	27.70
5	38.60	5	30.60
6	41.50	6	33.50
7	44.40	7	36.40
8	47.30	8	39.30
9	50.20	9	42.20
10	53.10	10	45.10
11	56.00	11	48.00
12	58.90	12	50.90
13	61.80	13	53.80
14	64.70	14	56.70
15	67.60	15	59.60
16	70.50	16	62.50
17	73.40	17	65.40
18	76.30	18	68.30
19	79.20	19	71.20
20	82.10	20	74.10
21	85.00	21	77.00
22	87.90	22	79.90
23	90.80	23	82.80
24	93.70	24	85.70
25	96.60	25	88.60
26	99.50	26	91.50
27	102.40	27	94.40
28	105.30	28	97.30
29	108.20	29	100.20
30	111.10	30	103.10
31	114.00	31	106.00
32	116.90	32	108.90
33	119.80	33	111.80
34	122.70	34	114.70
35	125.60	35	117.60
36	128.50	36	120.50
37	131.40	37	123.40
38	134.30	38	126.30
39	137.20	39	129.20
40	140.10	40	132.10
41	143.00	41	135.00
42	145.90	42	137.90
43	148.80	43	140.80
44	151.70	44	143.70

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the Federal Register as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

(39 U.S.C. 401, 404, 407)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-29965 Filed 11-14-84; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AL-006; A-4-FRL-2718-8]

Designation of Areas for Air Quality Planning Purposes; Alabama; Redesignation of TSP, SO_2 and Ozone Areas

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today approving a request by Alabama to redesignate a portion of Mobile County for total suspended particulates (TSP) as was proposed in the October 13, 1983, Federal Register (48 FR 46549). EPA is withholding final action on an Alabama request to redesignate a portion of Jackson County from nonattainment to attainment for sulfur dioxide (SO_2) It is noted that EPA proposed to approve this request (48 FR 46549). Other requests made by the State to redesignate a number of counties for ozone (O_3). are not being approved at this time because: (1) They are not adequately supported by data or other demonstration required by EPA redesignation policy (8 counties) or (2), the data upon which the redesignations are based need to be validated by EPA (26 counties). A public comment period was announced in the October 13, 1983, proposed notice (48 FR 46549), and it is noted that comments were received.

EFFECTIVE DATE: This action is effective December 17, 1984 for all items.

ADDRESSES: Copies of the materials submitted by Alabama may be examined during normal business hours at the appropriate location:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street NE., Atlanta, GA 30365

Air Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, AL 36130

Also, a Technical Support Document in which the criteria upon which EPA evaluated the Alabama requests is set forth, may be examined at the Public Information Reference Unit (address given above).

FOR FURTHER INFORMATION CONTACT: Michael Cooper, EPA Region IV Air Management Branch, at the Atlanta address above, telephone 404/881-3286 [FTS 257-3286].

SUPPLEMENTARY INFORMATION: Section 107 of the Clean Air Act provides for changes in attainment status designation by the Administrator. Alabama has submitted several requests that EPA promulgate new air quality classifications for various areas in the State with respect to various pollutants. The criteria upon which EPA evaluated these requests is set forth in a Technical Support Document (TSD) that has been placed in the rulemaking record for this Agency action. The TSD explains the basis and the purpose behind the action taken today. It is available for public inspection at the Public Information Reference Unit.

Alabama requests. On January 3, 1983, the Alabama Department of Environmental Management (ADEM) asked EPA to change the attainment status of the following three areas from primary nonattainment to attainment: A portion of Mobile County surrounding downtown Mobile (TSP), a portion of Jackson County (SO_2), and Etowah County (O_3). On December 6, 1982, ADEM asked EPA to redesignate 29 counties in the southern part of the State from ozone unclassifiable to ozone attainment and 2 counties in the southern part of the state from ozone nonattainment to attainment. EPA reviewed all thirty-four (34) requests and proposed Agency action on October 13, 1983, at 48 FR 46550.

EPA's proposed action on Alabama requests. ADEM's submittal to redesignate a portion of Mobile County from TSP nonattainment to TSP attainment and to redesignate a portion of Jackson County from SO_2 nonattainment to SO_2 attainment consisted of 4 quarters of monitoring data and a demonstration of emission reduction. The demonstration of emission reduction consisted of EPA's previous approval of the State's 1979 SO_2 and TSP SIP revisions. EPA proposed to approve these requests.

ADEM's submittal to redesignate Etowah County from ozone nonattainment to attainment consisted of 4 quarters of monitorjng data showing no violations of the NAAQS. EPA proposed to disapprove this request because the State's submittal did not adequately demonstrate commensurate emission reductions.

Alabama's request to redesignate Baldwin, Clarke, and Washington Counties from unclassifiable to attainment for ozone and Mobile and Russell Counties from nonattainment to attainment for ozone (all in south Alabama) was based on insufficient monitoring data to be considered representative of ambient concentrations of ozone, that is, less than 75% recovery for each ozone season. EPA proposed to disapprove the request on that basis.

With respect to the remaining 26 rural counties, the State's request was based on 4 quarters of monitoring data that EPA considered to be a valid representation of ambient ozone concentrations in those counties. On that basis EPA proposed to approve the request for the following 25 counties: Barbour, Bullock, Butler, Chambers, Chilton, Choctaw, Coffee, Coosa, Covington, Crenshaw, Dale, Dallas, Geneva, Hale, Henry, Houston, Lee, Macon, Marengo, Perry, Pickens, Pike, Sumter, Tallapoosa, and Wilcox. (Inadvertently, Greene County was omitted from the Federal Register proposal.) ADEM submitted several comments regarding EPA's proposal notice of October 13, 1983 (48 FR 46549).

Comments

Greene County: Greene County was among those unclassifiable areas where the redesignation request was based on four (4) quarters of ozone data without a violation. Alabama wrote that Greene County was not listed in the proposal notice.

Response: EPA agrees with the comment. Greene County was inadvertently omitted from the list of areas proposed for approval. EPA is withholding final action on 26 south Alabama unclassifiable counties pending a validation by EPA of the ozone data. Depending on the results of this validation, Greene County will be approved without prior proposal and the public will be given an opportunity to comment on the action.

Etowah County: ADEM submitted information which it asked EPA to consider as additional justification for redesignating Etowah County attainment for ozone. Included in the information was air quality data for the last two ozone seasons (through October of 1983) for Etowah County. It was projected that no violation would occur through November 1983 (end of ozone season beginning in 1983). Also included was a chart documenting reductions in VOC emissions for the county. Alabama requested that EPA at least postpone the

decision on Etowah County until the end of the 1983–84 ozone season.

Response: EPA's April 22, 1983, policy guidance which states that "two years of data with *no* exceedances is an acceptable surrogate" for three years of ambient data. Although Alabama has provided two ozone seasons of data, EPA has identified an exceedance in 1983. Therefore, the use of a three-year data base is appropriate.

Looking at three years, the three-year expected exceedance figure is above two. In addition, Alabama has not shown evidence that it has fully implemented the 1979 O_3 SIP; specifically, Group II VOC RACT regulations have not been implemented. Therefore, EPA is not redesignating Etowah County at this time, because this redesignation does not satisfy EPA redesignation criteria.

Mobile County: Alabama requested that the decision on the Mobile (and surrounding counties, namely, Baldwin, Clarke and Washington) ozone attainment status be delayed until the end of November, 1983. ADEM submitted ozone data from the two ozone monitors in Mobile County (monitors at Axis and one at Theodore/Chickasaw). In their argument, ADEM cites no violations in the past three years at Axis, even though 1982 had less than 75% data recovery and asserts that the expected exceedance for the Theodore/Chickasaw monitor over the past there years would be 1.04, provided thre were no exceedances of the standard in November and there was sufficient data recovery.

Response: It is known that site 01–062000003F01 (Chickasaw) has had two exceedances in 1983. The monitor at Chickasaw was previously located at the Big-Sniffer site (01–2400025). EPA determined that the monitor was improperly sited and requested that Alabama relocate it to the new site at Chickasaw in March of 1982. Using the new Chickasaw site, there are only two years of data (1982 and 1983). Since there are two exceedances in 1983, we cannot use two years of data. Therefore, one more year of monitoring data is needed. Additionally, EPA redesignation policy also requires evidence of an implemented EPA approved control strategy, which includes the adoption and implementation of Group I and Group II VOC regulations in the case of ozone nonattainment areas. Alabama has not shown evidence that it has fully implemented the 1979 O_3 SIP. Specifically, Group II VOC RACT regulations have not been implemented. It is noted that Baldwin, Clarke and Washington Counties are downwind contiguous counties of Mobile. These counties will be redesignated along with any redesignation of Mobile County.

Russell County: Alabama requested that the decision on Russell County's ozone attainment status be postponed until the end of November, 1983. Russell County was originally designated nonattainment for ozone because of its proximity to the Columbus, Georgia area. However, ADEM points out that according to Columbus air quality data no violations were monitored in 1981 and 1982 and Georgia air program officials report no violations in 1983 to date.

Response: Russell County is tied to Columbus, Georgia (Muscogee County) monitoring efforts. We have identified one exceedance in 1982, one in 1983, and one so far in 1984. Until a final determination is made on Muscogee County, EPA cannot redesignate Russell County for ozone. Russell County will be redesignated along with any redesignation of Muscogee County.

Actions: EPA is today redesignating a portion of Mobile County surrounding downtown Mobile (TSP) from primary nonattainment to attainment on the basis of eight quarters of monitoring data showing attainment. Since the time of Alabama's submittal, additional TSP monitoring data from the area has become available. EPA's review of the data shows there are no exceedances. Also, based on the information available EPA has determined that the attainment status of the area is not a result of emission reductions brought about by economic downturn. EPA feels the redesignation criteria have been met and is approving the redesignation of a portion of Mobile County for TSP.

EPA is taking no final action at this time on the redesignation of the following counties from unclassifiable to attainment for ozone: Barbour, Bullock, Butler, Chambers, Chilton, Choctaw, Coffee, Coosa, Covington, Crenshaw, Dale, Dallas, Geneva, Greene, Hale, Henry, Houston, Lee, Macon, Marengo, Perry, Pickens, Pike, Sumter, Tallapoosa, and Wilcox. The redesignation appears approvable based on 4 quarters of monitoring data; however, EPA is withholding final approval until the data upon which the redesignation is based is validated by EPA.

EPA is taking no final action at this time on the redesignation of a portion of Jackson County for SO_2. The decision is withheld pending a resolution of issues involving EPA's stack height regulations (February 8, 1982, 47 FR 5864). These regulations were remanded to EPA by the U.S. Court of Appeals, District of Columbia Circuit, in the case of *Sierra Club and Natural Resources Defense Council, Inc., Petitioners* vs. *EPA* et al.

EPA is not redesignating the following: Etowah, Mobile and Russell Counties from primary nonattainment to attainment for ozone, and Baldwin, Clarke and Washington Counties from unclassifiable to attainment for ozone.

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

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407))

Dated: November 9, 1984.

William D. Ruckelshaus,

Administrator.

PART 81—[AMENDED]

Part 81 of Chapter, Title 40, Code of Federal Regulations, is amended as follows:

Subpart C—Section 107 Attainment Status Designations

§ 81.301 [Amended]

In § 81.301, the Alabama—TSP table is amended by removing the entry for Mobile.

[FR Doc. 84–29938 Filed 11–14–84; 8:45 am]

BILLING CODE 6960–50–M

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40 CFR Part 180

[00000/R680; OPP-FRL-2648-1]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Ethylene Dichloride (1,2-Dichloroethane)

Correction

In FR Doc. 84–20836, beginning on page 31691, in the issue of Wednesday, August 8, 1984, make the following correction:

§ 180.1001 [Corrected]

On page 31692, in column one, in § 180.1001(d) table, under the table head "Insert ingredients" after "dichloride" add "(1,2-dichloroethane)".

BILLING CODE 1505–01–M

40 CFR Part 704

[OPTS—82012; FRL 2605-5]

Reporting and Recordkeeping Requirements Category of Chemical Substances Known as Chlorinated Naphthalenes; Submission of Notice of Manufacture or Import

Correction

In FR Doc. 84–22535, beginning on page 33649, in the issue of Friday, August 24, 1984, make the following correction:

§ 704.83 [Corrected]

On page 33653, in column three, in § 704.83 in the table of paragraph (b), under the table head "CAS registery number" the 12th entry should read "2198–77–8".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6032]

Suspension of Community Eligibility Under the National Flood Insurance Program; Maine et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the flood plain management requirements of the program. If FEMA receives documentation that the community has adopted the required flood plain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 287–0222, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood prone areas. (Section 202 (a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required flood plain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in an of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
		Region I			
Maine: Cumberland	Yarmouth, town of	230055B	Feb. 14, 1975, Emerg.; Nov. 15, 1984, Reg.; Nov. 15, 1984, Susp.	Mar. 1, 1974 and Sept. 17, 1976	Nov. 15, 1984.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date[1]
			Region II		
New York: Rensselaer	Castle-on-Hudson, village of	360673B	Nov. 20, 1975, Emerg.; Nov. 15, 1984, Reg.; Nov. 15, 1984, susp.	Mar. 1, 1974 and Aug. 6, 1976	Do.
Chenago	Norwich, town of	360162B	Aug. 7, 1975, Emerg.; Nov. 15, 1984, Reg.; Nov. 15, 1984, Susp.	Sept. 20, 1974 and Sept. 12, 1975	Do.
			Region V		
Wisconsin: Columbia	Lodi, city of	550061B	June 13, 1974, Emerg.; Nov. 15, 1984, Reg.; Nov. 15, 1984, Susp.	Apr. 12, 1974 and Aug. 6, 1976	Do.
Minnesota: Nicollet	Unincorporated areas	260625B	Apr. 17, 1974, Emerg.; Oct. 16, 1984, Reg.; Nov. 30, 1984, Susp.	Aug. 26, 1977	Nov. 30, 1984.
			Region VI		
Texas: Tarrant	Kennedale, city of	480603	June 30, 1975, Emerg.; Nov. 15, 1984, Reg.; Nov. 15, 1984, Susp.	Feb. 1, 1974 and Jan. 14, 1977	Nov. 15, 1984.
			Region X		
Oregon: Coos	Unincorporated areas	410042B	July 7, 1975, Emerg.; Nov. 15, 1984, Reg.; Nov. 15, 1984, Susp.	Nov. 1, 1974 and Sept. 6, 1977	Do.

[1] Date certain Federal assistance no longer available in Special Flood Hazard Areas.
[2] Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: October 9, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-30100 Filed 11-14-84; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations; Louisiana et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevation for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0700.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determination of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Maps (FIRM) for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448). 42 U.S.C. 4001–4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the flood plain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Louisiana	Orleans Parish (Docket No. FEMA-6602).	City of New Orleans and Orleans Parish.	The Times-Picayune	Honorable Erroll G. Williams, chief administrator, Room 9E 01, 1300 Perdido, New Orleans, LA 70112.	May 9, 1984	225203E
Maryland	Worcester (FEMA Docket No. 6612).	Town of Ocean City	Eastern Shore Times, June 13 1984, and June 20, 1984.	Honorable Harry W. Kelley, mayor of the town of Ocean City, P.O. Box 158, Ocean City, MD 21842.	May 31, 1984, letter of map revision.	245207E
Oklahoma	Tulsa and Wagoner Counties (FEMA Docket No. 6602).	City of Broken Arrow	Broken Arrow Daily Ledger, May 14, 1984 and May 21, 1984.	Honorable Nick Hood, mayor of the city of Broken Arrow, City Hall, P.O. Box 610, Broken Arrow, OK 74013.	May 9, 1984, letter of map revision.	400236C
Pennsylvania	Chester (FEMA Docket No. 6602).	Township of Caln	The Coatesville Record, May 23, 1984 and May 30, 1984.	Honorable Thomas Zalewski, township manager of Caln, P.O. Box 149, Caln, PA 19372.	May 15, 1984, letter of map revision.	422247B
Texas	Washington (FEMA Docket No. 6612).	City of Brenham	Brenham Banner-Press, May 29, 1984 and June 5, 1984.	Honorable Dorothy Flisowski, mayor of the city of Brenham, P.O. Box 1059, Brenham, TX 77833-1059.	May 21, 1984, letter of map revision.	480648B

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; delegation of authority to Administrator)

Issued: November 5, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administrator.

[FR Doc. 84-29873 Filed 11-14-84; 8:45 am]

BILLING CODE 6718-03-M

[Docket No. FEMA-6631]

44 CFR Part 65

Changes in Flood Elevation Determinations; Alaska, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0700.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the Flood Insurance Rate Map(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65.

Flood insurance, flood plains.

State	County	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alaska	Kenai-Cook Inlet Division.	Kenai Borough Peninsula	Oct. 17, 1984, Oct. 24, 1984, Peninsula Clarion.	Honorable S. Thompson, mayor, Box 850, Soldotna, AK 99669.	Sept. 21, 1984	020012
Illinois	DuPage	City of West Chicago	West Chicago Press, Nov. 1, 1984, Nov. 8, 1984.	Honorable A. Eugene Rennels, mayor, 475 Main St., West Chicago, IL 60185.	Oct. 25, 1984	170219
Iowa	Bremer	City of Waverly	Waverly Independent Democrat, Oct. 16, 1984, Oct. 23, 1984.	Honorable Michael Schneider, city manager, P.O. Box 616, Waverly, IA 50677.	Aug. 5, 1984	190030
Louisiana	Jefferson Parish	Unincorporated areas	Times-Picayune, Oct. 19, 1984, Oct. 26, 1984.	Honorable Joseph S. Yenni, parish president, New Court House, P.O. Box 9, Gretna, LA 70054.	Oct. 11, 1984	225199B
Massachusetts	Plymouth	Town of Bridgewater	Bridgewater Independent, Nov. 1, 1984, Nov. 8, 1984.	Honorable David L. Flynn, chairman of the office of selectmen, Office of Selectmen, Bridgewater, MA 02324.	Oct. 23, 1984	250260B
Washington	Clark County	Unincorporated areas	Oct. 17, 1984, Oct. 24, 1984, Columbian.	Honorable John S. McKibbin, chairman, board of commissioners, P.O. Box 5000, Vancouver, WA 98668.	Sept. 27, 1984	530024
Washington	Cowlitz County	Unincorporated areas	Oct. 17, 1984, Oct. 24, 1984, Daily News.	Honorable Van Youngquist, chairman, board of commissioners, 207 Fourth Ave., North Kelso, WA 98626.	Sept. 27, 1984	530032
Washington	Cowlitz and Clark	Woodland (city of)	Oct. 17, 1984, Oct. 24, 1984, Lewis River News.	Honorable W.K. Mills, mayor, city of Woodland, P.O. Box 9, Woodland, WA 98674.	Sept. 27, 1984	530035

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: November 5, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-29874 Filed 11-14-84; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; Illinois, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0700.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 43 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67.

Flood insurance, Flood plains.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Illinois	City of Harvey, Clay County (Docket No. FEMA-6605)	Dixie Creek	Just upstream of Dixie Highway	*606
			About 1,300 feet upstream of Rockwell Street	*607
		Calumet Union, Drainage Ditch	About 2,000 feet downstream of Halsted Street	*600
			About 1,600 feet upstream of Wood Street	*609
		Shallow Flooding (Ponding from Calumet Union Drainage Ditch).	At intersection of Wood Street and 147th Street	*604
			At intersection of Lincoln Avenue and 151st Street	*604
			At intersection of Halsted Avenue and 157th Street	*604
		Shallow Flooding (Overflow from Calumet Union Drainage Ditch).	At intersection of Vine Avenue and 153rd Street	*605
			At intersection of Ashland Avenue and 155th Street	*606
			At intersection of Honore Avenue and 156th Street	*607
			At intersection of Wood Street and 159th Street	*609
Maps available for inspection at the Building and Planning Department, 15320 Broadway Avenue, Harvey, Illinois.				
Louisiana	Baker, City, East Baton Rouge Parish (FEMA Docket No. 6160).	Baker Canal	At eastern corporate limits	*66
			Groom Road (upstream side)	*67
			At northern corporation limits	*77
		South Canal	Main Street (upstream side)	*81
		Lower White Bayou	Tristiac Avenue (extended)	*77
			North of Groom Road	*70
			South of Lavey Lane	*69
Maps available for inspection at the City Hall, 3325 Groom Road, Baker, Louisiana.				
Missouri	City of Liberty, Clay County (Docket No. FEMA 6605)	Cates Branch	Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.	*797
			Approximately 0.04 mile downstream of State Highway 291.	*806
			Just upstream of State Highway 291	*817
			Just upstream of Birmingham Road	*820
			Approximately .06 mile upstream of Birmingham Road	*826
			Just upstream of Burlington Northern Railroad	*832
			Approximately 0.05 mile upstream of Mill Street	*852
		Little Shoal Creek (Trident No. 3)	Approximately 0.09 mile downstream of High Drive	*790
			Approximately 0.28 Mile upstream of High Drive	*834
Maps available for inspection at the Community Development Office, 3rd Floor, 101 East Kansas Street, Liberty, Missouri 64068				
New Jersey	Boonton, Town, Morris County (FEMA Docket No. 6605).	Rockaway River	Downstream corporate limits	*196
			Upstream of weir located just upstream of Greenbank Road.	*200
			At foot of spillway on Boonton Reservoir Dam	*212
			Interstate 287 upstream side	*370
			Upstream side of Morris Avenue	*376
			Upstream side of West Main Street	*487
			Upstream corporate limits	*489
Maps available for inspection at the Town Hall, 100 Washington Street, Boonton, New Jersey.				
New Jersey	Boonton, Township, Morris County (FEMA Docket No. 6605).	Rockaway River	Downstream corporate limits	*489
			Upstream side of dam located upstream of North Main Street.	*498
			Upstream side of Powerville Road	*499
			Confluence of Beaver Brook	*502
			Upstream corporate limits	*503
		Beaver Brook	Confluence with Rockaway River	*502
		Unamed Creek	Confluence with Beaver Brook	*502
Maps available for inspection at the Municipal Building, R.D. 1, Tylerville Road, Boonton, New Jersey.				
New Jersey	Brigantine, City, Atlantic County (FEMA Docket No. 6619).	Atlantic Ocean	South side of Brigantine Boulevard from 3rd Street North to 14th Street North.	*10
			North of 12th Street North, east of intersection with Spaulding Place.	*13
			North of intersection of 14th Street and 13th Street	*10
Maps available for inspection at the City Hall, 1417 West Brigantine Avenue, Brigantine, New Jersey.				
New Mexico	Belen, City, Valencia County (FEMA Docket No. 6611)	Shallow Flooding from Belen Mesa Arroyos.	Annexed area between Bosque Drain and Garcia Ditch.	*4,803
Maps available for inspection at the Belen City Hall, 503 Becker Avenue, Belen, New Mexico.				
New York	Southold, Town, Suffolk County (FEMA Docket No. 6611).	Long Island Sound	Shoreline from Southold/Riverhead corporate limits to Mulford Point.	*15
			Mattituck Creek south of Mill Road	*11
			Areas near Sound View Avenue, near intersection with Mill Road.	*10
			Old Cove Road at Hashamomuck	*10
			Pond Inlet Pond	*11
		Fishers Island Sound	Shoreline of Fishers Island	*13
			Intersection of Fox Avenue and Central Avenue at West Harbor.	*11
			Mud Pond and Ice Pond	*11
		Block Island Sound	Shoreline of Fishers Island	*15
			Pond at Barleyfield Cove	*11
			Elizabeth Field	*11
		Gardiners Bay	Intersection of Main Road and State Parkway in Orient	*10
			A forested area, north of Main Road, 1,000 feet east of intersection of Narrow River Road.	*8
			A forested area, west of Narrow River Road, 2,500 feet south of intersection with Main Road.	*8

State	City/Town/County	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD). Modified
			Bay Avenue, between Main and King Streets	*9
			A forested area beside Spring Pond	*8
			Wiggins Court, near Gull Pond	*8
			Sandy Beach Road, near the Village of Greenport, New York.	*9
			Landing Lane, near the Village of Greenport, New York.	*8
			Shoreline of Stiring Basin, near Manhassett Avenue	*8
			A forested area between Main Road and Champlin Place, east of Bailey Avenue.	*8
Maps available for inspection at the Town Hall, Main Road, Southold, New York.				
North Carolina	Town of Cary Wake County (Docket No. FEMA 6605)	Black Creek Tributary A	About 1,200 feet downstream of Dynasty Drive	*335
			About 500 feet downstream of North Carolina State Road 1652.	*349
			About 50 feet upstream of North Carolina State Road 1652.	*356
Maps available for inspection at the Planning Department, 316 N. Academy, Cary, North Carolina 27511.				
North Carolina	City of Raleigh, Wake County (Docket No. FEMA 6605).	Walnut Creek	Just upstream of State Road 2551	*176
			About 2.2 miles upstream of State Road 2551	*182
		Crabtree Creek	At confluence with Neuse River	*178
			About 200 feet downstream of U.S. Highway 64	*199
			About 700 feet upstream of Wake Forest Road	*214
		Neuse River	At confluence of Crabtree Creek	*178
			About 1,000 feet downstream of Milburn Dam	*180
			About 2.5 miles upstream of Milburn Dam	*188
		Perry Creek	At confluence of Perry Creek East Branch	*196
			About 0.6 mile downstream of U.S. Highway 1	*210
		Perry Creek East Branch	At confluence with Perry Creek	*196
			About 750 feet downstream of Fox Road	*203
		Walnut Creek	About 0.45 mile downstream of Rock Quarry Road	*214
			Just upstream of Rock Quarry Road	*223
			Just downstream of Wilmington Street	*237
			Just downstream of South Saunders Street	*244
			About 1,400 feet upstream of Lake Wheeler Road	*258
			Just downstream of Lake Raleigh Dam	*270
		Rocky Branch	At confluence with Walnut Creek	*236
			Just upstream of Fayetteville Street	*243
		Wildcat Branch	At confluence with Walnut Creek	*235
			Just downstream of Norfolk Southern Railway	*235
		Southwest Prong of Beaverdam Creek.	Just upstream of Cambridge Road	*266
			Just downstream of Brooks Avenue	*280
Maps available for inspection at the Planning Department, 110 South McDowell Street, Raleigh, North Carolina.				
Ohio	City of Dayton, Montgomery County (Docket No. FEMA-6605).	Great Miami River	About 2.6 miles downstream of Conrail	*726
			About 1,000 feet upstream of Little York Road	*773
		Mad River	At mouth	*740
			Just downstream of State Route 444	*788
		Stillwater River	At mouth	*745
			About 300 feet upstream of Ridge Avenue	*747
		Wolf Creek	At mouth	*738
			About 8,500 feet upstream of Gettysburg Avenue	*790
Maps available for inspection at the Department of Planning, City Hall, 101 West Third Street, Dayton, Ohio.				
Ohio	City of Westerville, Franklin and Delaware Counties (Docket No. FEMA-6605).	Alum Creek	About 0.5 mile downstream of West Schrock Road	*798
			About 500 feet upstream of West Schrock Road	*801
			About 0.9 mile upstream of Park Road	*812
		Big Walnut Creek	Within community	*829
Maps available for inspection at the Building Department, City Hall, 21 South State Street, Westerville, Ohio.				
Oklahoma	Oklahoma City, City Canadian, Cleveland, McClain, Oklahoma, & Pottawatomie Counties (FEMA Docket No. 6605).	Spring Creek West Branch	NW 108th Street (downstream side)	*1,195
			NW 108th Street (upstream side)	*1,196
			Approximately 520 feet upstream NW 108th Street	*1,197
			Approximately 1,060 feet upstream NW 108th Street	*1,198
			Approximately 100 feet downstream of Council Road	*1,210
		Canadian River Tributary 1	Approximately 1,600 feet upstream of 119th Street SW	*1,210
			Downstream side of 126th Street SW	*1,214
			Upstream side of 112th Street SW	*1,217
			Upstream side of 111th Street SW	*1,218
			Approximately 100 feet upstream 111th Street SW	*1,219
		Tributary O of Canadian River Tributary 1.	Western Avenue (upstream side)	*1,203
Maps available for inspection at the City Hall, 200 North Walker Street, Suite 302, Oklahoma City, Oklahoma.				
Pennsylvania	Benton, Township, Columbia County (FEMA Docket No. 6605).	Fishing Creek	State Route 254 bridge (upstream side)	*734
			Approximately 1,500 feet upstream of State Route 254 bridge.	*736
			State Route 487 bridge (downstream bridge)	*813
			State Route 487 bridge (upstream side)	*813

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Maps available for inspection at the Benton Township Building, Benton, Pennsylvania.				
Texas	Carrollton, City, Collin, Dallas & Denton Counties (Docket No. FEMA-6605).	Furneaux Creek	Downstream of Dickerson Parkway Downstream of corporate limits just downstream of Denton Road.	*454 *461
Maps available for inspection at the City Hall, Carrollton, Texas.				
Texas	Richwood, City, Brazoria County (FEMA Docket No. 6605).	Bastrop Bayou	At State Route 288	*11
Maps available for inspection at 215 Halbert Street, Richwood, Texas.				
Texas	Robstown, City, Nueces County (FEMA Docket No. 6619).	Ditch A	Approximately 4,200 feet downstream of Missouri Pacific Railroad. Approximately 1,400 feet upstream of Bauer Road	*70 *77
Maps available for inspection at Robstown City Hall, P.O. Box 872, Robstown, Texas.				
Texas	Victoria, City, Victoria County (FEMA Docket No. 6605).	Lone Tree Creek	Upstream of Lone Tree Road Approximately 350 feet downstream of Southern Pacific Railroad.	*87 *90
Maps available for inspection at the City Hall, 105 West Juan Linn, Victoria, Texas.				
West Virginia	Charleston, City, Kanawha County (FEMA Docket No. 6611).	Elk River	CONRAIL (downstream)	*595
			Upstream corporate limits	*595
		Elk Twomile Creek	Upstream of Slack Street	*595
			Upstream of Airport Road	*609
			Upstream corporate limits	*837
		Twomile Creek	Upstream of 7th Avenue	*594
			At Schools Street	*594
			Scraggs Drive (upstream side)	*596
			Upstream corporate limits	*603
Maps available for inspection at the Planning Office, City Hall, Court and Virginia Streets, Charleston, West Virginia.				
West Virginia	Dunbar, City, Kanawha County (FEMA Docket No. 6611).	Tyler Creek	Upstream of Wilson Street Upstream of Roxalana Road	*599 *599
Maps available for inspection at the City Hall, 12th Street, Dunbar, West Virginia.				
West Virginia	Marmet, Town, Kanawha County (FEMA Docket No. 6605).	Lens Creek	Approximately 600 feet downstream of Chessie System Upstream of Clark Drive Access Road Upstream corporate limits	*603 *608 *614
Maps available for inspection at the City Hall, Marmet, West Virginia.				
West Virginia	South Charleston, City, Kanawha County (FEMA Docket No. 6611).	Davis Creek	Downstream of Chessie System Downstream of Kanawha Turnpike Upstream of Kanawha Turnpike Approximately .5 mile upstream of Kanawha Turnpike at limit of flooding affecting community.	*592 *592 *592 *592
Maps available for inspection at the City Hall, 4th Avenue and D Street, South Charleston, West Virginia.				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: November 5, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-29875 Filed 11-14-84; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-296; RM-4615]

FM Broadcast Station in Fort Mitchell, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 252A to Fort Mitchell, Alabama, as that community's first FM broadcast channel, in response to a petition filed by CLW Communications Group.

DATE: Effective January 14, 1984.

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

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Fort Mitchell, Alabama); MM Docket No. 84-296, RM-4615.

Adopted: October 29, 1984.

Released: November 8, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the Notice of Proposed Rule Making, 49 FR 15097, published April 17, 1984, proposing the assignment of FM Channel 252A to Fort Mitchell, Alabama, as that community's first FM

broadcast channel. The Notice was adopted in response to a petition filed by CLW Communications Group ("petitioner"). Petitioner filed supporting comments reaffirming its intention to apply for the channel, if assigned. No comments in opposition to the proposal were received.

2. The Commission believes that the public interest would be served by the assignment of FM Channel 252A to Fort Mitchell, Alabama, since it could provide a first local FM broadcast service to the community. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective January 14, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following city:

City	Channel No.
Fort Mitchell, Alabama	252A

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

5. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-29919 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-269; RM-4572]

FM Broadcast Station in Humnoke, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 269A to Humnoke, Arkansas, as that community's first FM broadcast channel, in response to a petition filed by James M. Cope.

DATE: Effective January 14, 1985.

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

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Humnoke, Arkansas); MM Docket No. 84–269, RM–4572.

Adopted: October 19, 1984.
Released: November 8, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the Notice of Proposed Rule Making, 49 FR 11688, published March 27, 1984, proposing the assignment of FM Channel 269A to Humnoke, Arkansas, as that community's first FM broadcast channel. The Notice was adopted in response to a petition filed by James M. Cope ("petitioner"). Petitioner filed a statement of continuing interest reaffirming his intention to apply for the channel, if assigned. No comments in opposition to the proposal were received.

2. The Commission believes that the public interest would be served by the assignment of FM Channel 269A to Humnoke, Arkansas, since it could provide a first local FM broadcast service to the community. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules with a site restriction 1.1 miles north of Humnoke.

3. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Communication's Rules, it is ordered, That effective January 14, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following city.

City	Channel No.
Humnoke, Arkansas	269A

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

5. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-29918 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-35; RM-4638]

FM Broadcast Station in Citronelle, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Barbara Kay Turner, assigns channel 270A to Citronelle, Alabama, as that community's first FM service.

DATE: Effective January 15, 1985.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Citronelle, Alabama); MM Docket No. 84–35, RM–4638.

Adopted: October 29, 1984.
Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 4521, published February 7, 1984, proposing the assignment of Channel 272A to Citronelle, Alabama, as that community's first FM assignment. The *Notice* was adopted in response to a petition submitted By Barbara Kay Turner ("petitioner"). Petitioner submitted a late-filed letter reaffirming her intention to apply for the channel, if assigned.[1] Late-filed comments were submitted by WXBM–FM, Inc. ("WXBM"),[2] licensee of Station WXBM-

[1] Petitioner's late-filed comments were not accompanied by a request for their acceptance nor was a reason given for the untimely filing. However, they will be accepted herein to permit the statement of continuing interest in the Citronelle assignment.

[2] WXBM's comments and counterproposal were not timely submitted, but were accompanied by a petition for leave to file late comments requesting

Continued

FM, Milton, Florida. No other comments in opposition to the proposal were received.

2. WXBM requests that Channel 270A be assigned to Citronelle instead of Channel 272A, thereby, enabling WXBM to upgrade its station in order to preserve full Class C status in compliance with the new rules implemented March 1, 1984, in MM Docket No. 84–231, 49 FR 11214, published March 26, 1984.

3. We believe the public interest would be served by the assignment of channel 270A to Citronelle, Alabama, since it could provide a first FM service to the community. The channel can be assigned in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules, with a site restriction of 4.7 kilometers (2.9 miles) northeast of the community.

4. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective January 15, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Citronelle, Alabama	270A

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

6. For further information concerning the above, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–29916 Filed 11–14–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–1059; RM–4563]

FM Broadcast Station in Ferndale, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Leroy Demery, assigns FM Channel 257A to Ferndale, California, as that community's first FM allocation.

DATE: Effective: January 14, 1985.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Ferndale, California); MM Docket No. 83–1059, RM–4563.

Adopted: October 29, 1984.
Released: November 8, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 48 FR 47023, published October 17, 1983, proposing the assignment of FM Channel 257A to Ferndale, California, as that community's first FM allocation. The Notice was adopted in response to a petition filed by Leroy Demery ("petitioner"). Petitioner submitted late filed comments reaffirming his intention to apply for the channel, if assigned.[1] No other comments or oppositions to the proposal were received.

2. The Commission believes that the public interest would be served by the assignment of FM Channel 257A to Ferndale, California, in order to provide a first FM service to the community. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in §§ 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283, of the Commission's Rules, it is ordered, That effective January 14, 1985, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with regard to the following community:

City	Channel No.
Ferndale, California	257A

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

5. For further information concerning the above, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–29914 Filed 11–14–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–948; RM–4498]

FM Broadcast Station in Keyser, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 296A as a second FM channel to Keyser, West Virginia, in response to a petition filed by Anna Louise Newman.

DATE: Effective January 14, 1985.

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

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b) Table of Assignments FM Broadcast Stations (Keyser, West Virginia); MM Docket 83–948, RM–4498.

Adopted: October 19, 1984.
Released: November 8, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making* 48 FR 41465, published September 15, 1983, proposing the assignment of Channel 296A to Keyser, West Virginia, as the community's second FM allocation. The *Notice* was adopted in response to a petition filed by Anna Louise Newman ("Petitioner"). Supporting comments were filed by the petitioner reaffirming her intention to apply for the channel, if assigned. No other comments were received.

2. The Commission believes that the public interest would be served by the assignment of Channel 296A to Keyser, West Virginia, in order to provide a second FM service to that community. The channel can be assigned in compliance with the minimum distance

their acceptance. We believe these comments should be accepted since WXBM, Inc. recently acquired the station and was not the licensee as of the filing deadline.

[1] Petitioner's comments were not timely filed, but will be accepted for the purpose of permitting the petitioner to reaffirm his interest in the proposed channel.

separation requirements of Section 73.207 of the Rules.

3. Pursuant to the authority contained in sections 4(1), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective January 14, 1985, the FM Table of Assignments § 73.202(b) of the Commission's Rules is AMENDED with regard to the following community:

City	Channel No.
Keyser, West Virginia	231, 296A

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

5. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–29913 Filed 11–14–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–13; RM–4582]

FM Broadcast Station in Tuscola, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 269A to Tuscola, Michigan, as that community's first FM service. This action was taken in response to comments filed by James J. McCluskey.

DATE: Effective: January 15, 1985.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Tuscola, Michigan); MM Docket No. 84–13, RM–4582.

Adopted: October 19, 1984.

Released: November 9, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 49 FR 3216, published January 26, 1984, proposing the assignment of Channel 269A to Tuscola, Michigan, as that community's first FM assignment. The *Notice* was adopted in response to a petition filed by Robert A. Sherman ("petitioner"). Petitioner advised the Commission on January 27, 1984 that he no longer intended to pursue the proposal. However, comments were filed by James J. McCluskey ("McCluskey"), in which he expressed an intention to apply for the channel, if assigned.

2. The Commission believes that the public interest would be served by the assignment of Channel 269A to Tuscola, Michigan, as that community's first FM service. The assignment can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules with a site restriction of 2.3 kilometers (1.4 miles) east of the city to avoid short-spacings to Stations WILS–FM (Channel 269A) in Lansing, Michigan, and Station WDBI–FM (Channel 269A) in Tawas City, Michigan.

3. Canadian concurrence has been obtained since the proposal is within 320 kilometers (200 miles) of the Canadian-U.S. border.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204 and 0.283 of the Commission's Rules, it is ordered, That effective January 15, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following community:

City	Channel No.
Tuscola, Michigan	269A

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

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–29915 Filed 11–14–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[BC Docket No. 82–186; RM–3655; FCC 84–514]

FM Broadcast Station Blanketing Interference

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This action amends the rules regarding FM broadcast station blanketing interference. The current rules are considered to be too ambiguous to permit proper enforcement when the need arises. The new rules define an area where blanketing interference can be assumed to exist and places full responsibility on permittees to remedy complaints of banketing interference within this area. Existing licensees are urged to cooperate with complainants and provide information regarding possible remedies to reduce the interference.

EFFECTIVE DATE: The effective date of this rule will be January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Michael A. Lewis, Mass Media Bureau, (202) 632–9660.

Lists of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order Termination of Proceeding

In the Matter of FM Broadcast Station Blanketing Interference (BC Docket No. 82–186, RM–3655).

Adopted: October 26, 1984.

Released: November 8, 1984.

By the Commission.

Introduction

1. The Commission has under consideration a *Notice of Proposed Rule Making* (*Notice*) adopted on April 1, 1982, and the comments and reply comments filed thereto, concerning a proposal to clarify the Commission's Rules regarding FM blanketing interference.[1]

2. Blanketing interference occurs when "an FM station's signal strength or signal power density is of such magnitude that if causes receivers near the transmitting antenna to be partially or completely blocked from receiving other broadcast stations." [2] Although

[1] *Notice of Proposed Rulemaking* in BC Docket No. 82–186 (47 FR 18936, May 3, 1982) adopted April 1, 1982.

[2] Blanketing occurs in both TV and FM receivers. Throughout this *Order*, use of the term "receiver" pertains to both.

the Commission's Rules presently recognize this phenomenon, they do not define an area in which an FM station could expect blanketing to occur, nor do they clearly define the responsibility of the FM station licensees to satisfy complaints.[3] It is the purpose of this *Report and Order* to present rules which clearly define FM blanketing areas and to define the licensee's responsibility for remedying interference complaints within this area. In accordance with Section 73.508(a) of the Commission's Rules, both commercial and noncommercial educational FM broadcast stations are subject to the provisions of this *Order*.

Background

3. This proceeding was initiated in 1980 in response to a petition by the Association of Federal Communications Consulting Engineers (AFCCE) which requested changes to Part 73 of the Commission's Rules to define a blanketing area for FM broadcasters and define specific responsibilities to remedy complaints within this area. AFCCE proposed that the 115 dBu contour be used to define the blanketing area. AFCCE further proposed that an applicant choosing an antenna site where the 115 dBu contour would encompass an area of population density greater than 1000 people per square mile, submit a showing demonstrating that no alternative site is available. Two parties submitted comments in response to the AFCCE petition, the American Broadcasting Company (ABC) and Minnesota Public Radio (MPR). Both parties supported the intent of the petition although ABC was opposed to the showing and MPR warned that the petition does not sufficiently account for the interference caused by spurious emissions generated by collocated stations.

4. After considering the available information, the Commission adopted the *Notice of Proposed Rulemaking* on April 1, 1982. The *Notice* proposed to adopt the 115 dBu contour as the definition of the blanketing area and placed full financial responsibility on licensees to remedy interference complaints within this contour caused by blanketing. The *Notice* declined, however, to propose the alternate site showing described in the AFCCE petition. In response to the *Notice*, approximately 20 parties filed comments, reply comments, and engineering studies.[4] It is on this record that this *Report and Order* is based.

[3] Section 73.315(e) of the Commission's Rules.

[4] See Appendix B for list of commenting parties.

Comments

5. The majority of commenters to the *Notice* accepted the need for rules to govern blanketing interference. Although the majority of licensees are satisfying complaints without regulation, most commenters, including many FM licensees, stated that clarifications of the current rules would be of benefit and are needed.

6. The major disagreement with the *Notice* dealt with the calculation of the 115 dBu contour. We proposed a method to determine the distance to the 115 dBu contour based on free space propagation. Thus, the method did not consider specific antenna heights nor specific antenna patterns. Commenters argued against such a method stating that by neglecting to incorporate the specific facilities into the calculation, the area of responsibility, as well as the burden, would be increased. Commenters also pointed out that deficient input selectivity and insufficient circuit shielding of receivers were primary contributors to susceptibility to blanketing interference. Some commenters urged the Commission to mandate receiver standards and thereby place the burden on manufacturers instead of broadcasters. Commenters also pointed out that the Commission has always set allocation standards by considering receivers of good design and urged the Commission to continue that practice within this proceeding.

7. Most commenters favored the Commission's proposal to assign shared responsibility to collocated stations. ABC, The Senior Road Tower Group, and the Joint Comments of FM Licensees (Joint Comments), however, proposed that if the offending station could be identified easily, that station should bear full responsibility. Minnesota Public Radio (MPR) submitted very detailed reports regarding the interference generated by collocated stations. The reports dealt with an interference known as third order intermodulation which is similar in its effects to blanketing but different in origin. MPR urged the Commission to consider third order intermodulation in this proceeding and to adopt appropriate rules.

Issue Analysis

8. The issues to be resolved in this proceeding are:

(1) The Need for a Change in the FM Blanketing Rules;

(2) The Extent of the Blanketing Area and the Method of Calculation;

(3) The Licensee's Responsibility Within the Blanketing Area;

(4) The Responsibility of Collocated Stations;

Each of these issues will be developed separately.

Issue 1: Need for a Change in the FM Blanketing Rules

9. As indicated in the *Notice*, the present rule is ambiguous as to the definition of blanketing and the licensee's responsibility to correct it. The Commision believes that the specificity contained in the proposed rule benefits both the applicant and the listening public. By defining a specific area of responsibility, the applicant can perform a cost-benefit analysis of the proposed antenna site before construction and before commencement of program tests and can then make an educated decision as to the appropriateness of that particular site. By counting the homes within the proposed 115 dBu contour, the applicant can find a reasonable estimate of the expected cost of eliminating the interference. The people within this area would also be assured of being able to continue receiving existing stations. Finally, elimination of the ambiguity contained within the current rule will reduce the likelihood of arguments and litigation.

10. The National Association of Broadcasters (NAB) points out that the proposed rule appears inconsistent with Section 73.315(b) which urges applicants to locate as near the center of the city of license as possible. Such areas have high population densities, and create a large number of possible blanketing interference cases. Section 73.315(b) of the Rules is not proscriptive. Rather, it sets forth various factors to be considered by an applicant in selecting a transmitter site. Consistent with our other actions herein, we believe it is appropriate to amend Section 73.315(b) to incorporate our concerns on blanketing interference. This is not to say the Commission will reject any application which specifies a downtown antenna site, but we will urge applicants to actively consider blanketing interference when choosing an antenna site and to design stations that minimize such interference.

Issue 2: Blanketing Area and Method of Calculation

11. The use of the 115 dBu contour as the definition for the blanketing area was first proposed in the AFCCE petition. Most commenters agreed with its use; however, some were critical of the method proposed to calculate the contour. As discussed earlier, the Commission proposed using the inverse

distance method, based on maximum permitted facilities, applied to the main radiation lobe in the horizontal direction only (see *Notice* for a complete discussion). This method ignores the vertical radiation pattern of the antenna and does not account for antenna height. The *Notice* stated, as did many commenters, that very high antenna heights normally tend to lessen blanketing interference and their use should be encouraged.

12. Notwithstanding the opposition found in the comments, the Commission continues to believe that the original inverse distance calculation proposed in the *Notice* will ensure that all valid complaints are satisfied. The simplicity and certainty contained within this equation renders it more advantageous than considering actual antenna vertical patterns. Thus, the question of who lies within the area of responsibility becomes a simple issue. Any other method of prediction fosters debates over actual versus theoretical antenna patterns, leading to ill-defined areas of responsibilities. Finally, the needs of the listening public must rank high in this decision. Even though the method being adopted to calculate the 115 dBu contour may extend the area of responsibility somewhat, it will assure that a minimum number of FM listeners are affected by new stations. Stations that are truly not causing interference will feet no impact by these actions.

13. The National Radio Broadcasters Association (NRBA) believes that when an antenna with horizontal directivity is used, it would be more appropriate to calculate the 115 dBu contour using the ERP "in the pertinent horizontal direction" and requested an appropriate modification of the proposed rule. This is a more realistic depiction of a directional antenna's contour and the rule will be amended accordingly. Also, we believe it appropriate to consider the effect of beam tilt on the calculation of the 115 dBu contour. By employing the formula given in the *Notice*, stations using beam tilt would calculate a 115 dBu contour with less area than that intended by the formula. Therefore, instead of calculating the contour using the ERP in the horizontal direction only, calculations will be made using the maximum ERP of the main radiated lobe regardless of orientation.

14. By continuing to use the inverse distance method to calculate the 115 dBu contour, the Commission creates an additional consideration for FM station applicants. Since the area of responsibility will probably be greater than if other predictive methods were used, it becomes even more essential for applicants to design stations which minimize the potential of blanketing interference. By accordingly amending § 73.315(b), the Commission urges applicants to consider the trade-offs involved in selecting sites that will minimize interference.

Issue 3: Licensee's Responsibilities

15. The *Notice* proposed that all licensees be required to satisfy all blanketing interference complaints without cost to the complainant. This requirement did not include those complaints outside the realm of reasonableness, such as, malfunctioning or mistuned receivers, improperly installed antenna systems, use of high gain antennas or antenna booster amplifiers and non-RF devices such as tape recorders or hi-fi amplifiers (phonographs).

16. New applicants should choose antenna sites which balance the need to provide the requisite signal to the city of license while minimizing blanketing interference. Ideally, the site will be sparsely populated. To encourage such site selection, the rule will place full financial responsibility for correcting complaints within the blanketing area on applicants who commence program test authority on or after January 1, 1985.

17. Although the majority of interference situations should occur within the defined area, some isolated interference may occur beyond the blanketing area perimeter. For such complaints, licensees and permittees are expected to cooperate with complainants by providing technical assistance in determining the cause of the problems and providing advice on corrective measures. Stations, however, have no financial obligation to resolve such problems.

18. One commenter, Maine Radio and Television Company, urged the Commission to adopt the alternative site showing, as proposed in the original AFCCE petition. It was the view of the Commission during the *Notice* that placing full financial obligation on applicants renders the showing unnecessary as applicants are in a better position to weigh their trade-off decisions than the Commission. This viewpoint has not been changed and, therefore, the showing shall not be required.

19. Comments received in response to the *Notice* urged the Commission to grandfather existing stations. This would leave existing stations subject to the present rule which places responsibility on stations to satisfy all complaints. As stated earlier, the Commission believes too much ambiguity exists in such a rule. Therefore, the rule will be amended to delete the ambiguity but leave the intent intact.

20. The new rule will require existing stations to provide technical assistance to complainants. This entails the providing of information on the cause of the interference and also providing information on proper corrective measures. Incorporating this provision into the Rules will provide existing stations protection from a continuing financial hardship while clearly stating their responsibilities.

21. In providing protection to existing licensees against continuing financial burdens, the Commission must address the issue of how to treat modified facilities of existing stations. Since modifications to a station's antenna can create new levels of blanketing interference, the Commission believes that the existing licensee should be held responsible for any complaints arising from the installation of a new antenna. Therefore, existing stations that replace their current antennas on or after January 1, 1985, will assume full financial responsibility for the satisfaction of blanketing interference complaints within their areas of responsibility for a period of one year beginning with commencement of operations with the new antenna. A corresponding provision dealing with a major change, such as a change of power, however, is unnecessary since a major change requires a new Construction Permit. At that point, an existing station would fall under the authority of the blanketing rules for permittees.

22. Commenters also suggested imposition of a time limit on the full financial obligation of stations to correct blanketing interference. Thus, a licensee that originally located in a sparsely populated area which later becomes urbanized, would not incur the same obligation as a new station in that area. The Commission agrees. New permittees, therefore, will assume full financial responsibility to satisfy blanketing interference complaints received by the station during a one year period following the commencement of program tests. After this period, the stations will fall under the rule for existing stations.

23. Many commenters urged the Commission to apply new rules to receivers and set receiver standards. Comments stated that Docket No. 14185, which implemented the FM allocations table, was based on "receivers of good quality." The Joint Comments stated that to stray from this decision would "diminish whatever incentive exists to

develop better quality receivers." Many commenters shared this view, stating the Commission is making broadcasters responsible for deficient receivers.

24. It is not the Commission's intention to overly burden licensees by this proceeding. That is why existing stations merely have to provide assistance in resolving complaints to satisfy their obligations. Rather, it is our intent to have applicants place blanketing interference high on their priority lists when choosing antenna sites. We do not expect licensees to replace cheap, hand held radios with expensive FM tuners, but we decline to include a clause that would protect receivers of "good design only." We expect permittees and licensees to meet the intent of this rule and remedy interference. As commenters have pointed out, this is already being done by the majority of licensees today. As First Media states "Past experience has clearly demonstrated that FM licensees are fully capable of and willing to resolve those relatively few reasonable complaints of blanketing interference that are received." Likewise, the Commission declines to set receiver interference rejection standards. Government standards tend to be slow in development and inflexible in change. A more desirable situation would be voluntary standards developed by industry leaders.

25. ABC and the Joint Comments assumed in their comments that mobile receivers would be excluded from any new rules and sought verification on this assumption. The *Notice* did not discuss mobile receivers but past Commission policy has normally excluded them from consideration due to their inherent transient nature. This proceeding is no different and, thus, mobile receivers shall be excluded under the provisions of these rules.

Issue 4: Collocated FM Stations

26. As a result of Commission inquiries contained in the *Notice*, much debate was submitted within the comments concerning collocated FM stations. As a result of consideration of these comments, the following policies will be adopted.

27. A station choosing to collocate with existing FM stations shall assume full responsibility to remedy new interference complaints. This decision was widely supported in the comments and is consistent with the Commission's policy that the last station entering a market shall assume responsibility for any new interference created. Stations collocating and commencing operation concurrently shall assume joint responsibility for the rectification of blanketing complaints. This proposal was also widely supported in the comments.

28. In the *Notice*, the Commission asked whether the powers of collocated stations should be added to find the appropriate 115 dBu contour in determining the blanketing area. Many commenters opposed this position. The Commission agrees and thus decides that collocated stations shall assume financial responsibility, partially or wholly, for complaints received within their own 115 dBu contours.

29. MPR urged the Commission to include third-order intermodulation interference, which occurs within the receiver, under the scope of these rules. MPR submitted highly detailed and complex reports regarding this issue and how it relates to collocated stations. Opposing comments stated that the third-order intermodulation effect is largely a receiver problem and not manageable by broadcasters. Upon review of MPR's reports and the reply comments concerning them, the Commission has decided not to include the interference referred to by MPR as RITOIE (Receiver Induced-Third Order-Intermodulation Effect) under the scope of this Rule Making. This interference is not consistent with the definition of blanketing interference as offered in the *Notice* and will not be considered further.

30. *Regulatory Flexibility Act Final Analysis.*

I. *Reason for action.* Lack of specificity in the present Rules leaves the question of responsibility for resolution of interference ill-defined. The increasing number of FM stations and the practice of collocating higher powered stations within densely populated, center-city areas, contribute to the potential for blanketing interference. It is deasirable to have FM station applicants consider blanketing interference when designing their stations and the present Rules do not sufficiently accomplish this goal.

II. *Purpose of rules.* The new rules establish the area where blanketing can be assumed to exist and clearly define a station's responsibility for satisfying complaints of blanketing interference within this area. Also, they encourage more consideration of blanketing interference by applicants in selecting transmitter sites to minimize interference.

III. *Legal basis.* Section 303(f) and 303(r) of the Communications Act of 1934 as amended, in order that stations may operate free from harmful interference within their service areas.

IV. *Description, potential impact, and number of small entities affected.* This action would clarify the FM station licensee's responsibility for correcting blanketing interference in the area around the transmitter. The proposed rule would affect all new FM station applicants. Existing stations are not affected, they are merely being urged to follow the rule's intent. In the worst case, a permittee may have a large financial burden to rectify complaints. However, with good station design this burden could be reduced significantly.

V. *Recording, record keeping, and other compliance requirements.* Permittees commencing program test authority on or after 12/01/84, will be required to satisfy all complaints of blanketing interference within the defined blanketed area for a period of one year. After one year, they and all existing stations are urged to help in resolving complaints of blanketing interference. There are no specific record keeping requirements.

VI. *Federal rules which overlap, duplicate, or conflict with this rule.* None.

VII. *Significant alternatives not adopted.* None.

31. The Secretary shall cause a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. *et seq.*).

32. Accordingly, it is ordered, pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, that Part 73 of the Commission's Rules is amended effective 01/01/1985, as set forth in the attached Appendix. It is further ordered, that the proceeding in MM Docket 82–186 is hereby terminated.

32. For further information on this matter, contact Michael A. Lewis, Mass Media Bureau, at (202) 632–9660.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

1. 47 CFR 73.310 is amended by adding a new definition for FM blanketing in alphabetical sequence in paragraph (a) to read as follows:

§ 73.310 Definitions.

(a) * * *

* * * * *

FM Blanketing. Blanketing is that form of interference to the reception of other broadcast stations which is caused by the presence of an FM broadcast signal of 115 dBu (562 mV/m) or greater signal strength in the area adjacent to the antenna of the transmitting station. The 115 dBu contour is referred to as the blanketing contour and the area within this contour is referred to as the blanketing area.

* * * * *

2. 47 CFR 73.315 is amended by revising the headnote and paragraph (b), by removing paragraph (e), and by redesignating current paragraph (f) as paragraph (e) as follows:

§ 73.315 FM transmitter location.

* * * * *

(b) The transmitter location should be chosen to maximize coverage to the city of license while minimizing interference. This is normally accomplished by locating in the least populated area available while maintaining the provisions of paragraph (a) of this section. In general, the transmitting antenna of a station should be located in the most sparsely populated area available at the highest elevation available. The location of the antenna should be so chosen that line-of-sight can be obtained from the antenna over the principle city or cities to be served; in no event should there be a major obstruction in this path.

* * * * *

3. New 47 CFR 73.318 is added to the Commission's Rules as follows:

§ 73.318 FM blanketing interference.

Areas adjacent to the transmitting antenna that receive a signal with a strength of 115 dBu (562 mV/m) or greater will be assumed to be blanketed. In determining the blanketed area, the 115 dBu contour is determined by calculating the inverse distance field using the effective radiated power of the maximum radiated lobe of the antenna without considering its vertical radiation pattern or height. For directional antennas, the effective radiated power in the pertinent bearing shall be used.

(a) The distance to the 115 dBu contour is determined using the following equation:

$D \text{ (in kilometers)} = 0.394\sqrt{P}$

$D \text{ (in miles)} = 0.245\sqrt{P}$

Where P is the maximum effective radiated power (ERP), measured in kilowatts, of the maximum radiated lobe.

(b) Permittees or licensees who commence program tests, replace their antennas, or request facilities modifications, and who are issued a new Construction Permit on or after January 1, 1985, must satisfy all complaints of blanketing interference which are received by the station during a one year period. The period begins with the commencement of program tests, or commencement of programming utilizing the new antenna. Resolution of complaints shall be at no cost to the complainant. These requirements specifically do not include interference complaints resulting from malfunctioning or mistuned receivers, improperly installed antenna systems, or the use of high gain antennas or antenna booster amplifiers. Mobile receivers and non-RF devices such as tape recorders or hi-fi amplifiers (phonographs) are also excluded.

(c) A permittee collocating with one or more existing stations and beginning program tests on or after January 1, 1985, must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year. Two or more permittees that concurrently collocate on or after January 1, 1985, shall assume shared responsibility for remedying blanketing complaints within the blanketing area unless an offending station can be readily determined and then that station shall assume full financial responsibility.

(d) Following the one year period of full financial obligation to satisfy blanketing complaints, licensees shall provide technical information or assistance to complainants on remedies for blanketing interference.

Appendix B

Comments to Notice of Proposed Rulemaking—Docket No. 82-186

1. Joint Comments of FM Broadcast Station Licensees
2. Harte-Hanks Radio Inc.
3. Maine Radio and Television Company
4. Consumer Electronics Group of the Electronic Industries Association
5. National Radio Broadcasters Association
6. Association of Federal Communications Consulting Engineers
7. National Public Radio
8. Vir James P.C.
9. American Broadcasting Company Inc.
10. National Association of Broadcasters
11. Viacom International Inc.
12. Corporation of Public Broadcasting
13. WROK, Inc.
14. Senior Road Tower Group
15. WUOL Radio
16. Westinghouse Broadcasting and Cable, Inc.
17. William F. Ruck, Jr.
18. J.G. Roundtree, P.E.
19. First Media Corporation
20. Cox Communications, Inc.
21. Metromedia Inc.
22. Minnesota Public Radio, Inc.

Reply Comments to Docket No 82-186

1. National Radio Broadcasters Association
2. FM Broadcast Station Licensees
3. Maryland-District of Columbia-Delaware Broadcasters Association, Inc.
4. Minnesota Public Radio, Inc.
5. The Licensees of FM Radio Stations KEEY-FM, KDWB-FM, WLOL, and KQRS-FM.

[FR Doc. 84-29947 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[Docket No. 20735; RM-1301; RM-1974; RM-2655; FCC 84-515]

Changes in the Commission's Rules Relating to Noncommercial, Educational FM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action resolves the final issues of a comprehensive review of the assignment and operation of FM stations located in that portion of the FM band (88–92 MHz, Channels 201–220) reserved for the use of noncommercial, educational FM service. Specifically, a Table of Assignments for this reserved spectrum will not be incorporated into the rules, but standards to minimize interference to TV Channel 6 stations from noncommercial educational FM stations will be adopted.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kathryn S. Hosford, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Radio broadcast, Television.

Third Report and Order (Proceeding Terminated)

In the Matter of Changes in the Rules Relating To Noncommercial, Educational FM Broadcast Stations (Docket No. 20735, RM-1301, RM-1974, RM-2655).

Adopted: October 26, 1984.
Released: November 6, 1984.

By the Commission: Commissioner Dawson concurring in the result.

Introduction

1. The Commission has before it a *Second Further Notice of Proposed Rule Making (Second Notice)* adopted on May 13, 1982, [47 FR 24144 on June 3, 1982] and the filings made in response thereto. The proceeding was initiated by a petition filed by the Corporation for Public Broadcasting (CPB) on May 12, 1972. The petition sought a comprehensive review of the assignment

procedures and operational characteristics of noncommercial educational FM (NCE–FM) stations located within the reserved FM broadcast band (Channels 201–220).[1] The Commission has already, as part of this proceeding, adopted several rule changes to encourage more efficient use of the reserved spectrum.[2]

2. The *Second Notice* sought to resolve several technical issues regarding the potential for interference to TV Channel 6 (TV–6) stations caused by operation of NCE–FM stations. A high potential for interference to TV Channel 6 stations exists because the NCE–FM band and TV Channel 6 are immediately adjacent in frequency. TV receivers often lack sufficient selectivity to reject a strong NCE–FM signal, resulting in interference. Several parties submitted comments and reply comments in this matter. The information supplied was very useful in helping us to reach a decision in this proceeding.

3. The inquiry into this matter has included: studies to determine the abilities of television receivers to distinguish between desired and undesired signals of differing relative strengths; evaluations of various techniques to remedy the interference problems; and, development of methods to predict interference levels and locations. Numerous issues and options were considered to ameliorate the interference problem, including: development of an assignment table for NCE–FM allotments, improved TV receiver selectivity standards, collocation of FM and TV transmitters, the use of vertical antenna polarization for the NCE–FM stations, and the use of TV receiver interference filters. The Commission also developed a computer program to predict where interference is likely to occur.

4. The solution being adopted today rejects as impractical an NCE–FM assignment table and mandated improvements in TV receivers. However, the solution does permit wide latitude for NCE–FM applicants to "engineer in" their stations to take advantage of all available interference reducing methods. In this way, NCE–FM service can be provided without substantial interference to TV Channel 6 stations.

[1] Although noncommercial educational FM stations may operate on Channels 221–300, this proceeding is only concerned with those operating in that portion on the FM band reserved for their use, Channels 201–220.

[2] See *First Report and Order* (43 FR 25821 published on June 15, 1978) and *Second Report and Order* (43 FR 39704 published on September 6, 1978).

Issues

5. There are five basic issues to be resolved in this matter:

(1) Should there be a table of NCE–FM allotments and powers?
(2) How effective are the various interference remedies?
(3) What is the appropriate level of interference protection?
(4) How should interference be predicted?
(5) What solution should be adopted?

Each issue will be developed separately.

Issue 1: NCE–FM Table of Allotments

6. Among the issues raised in the *Second Notice* was the feasibility of an assignment table for the noncommercial educational FM band. The *Second Notice* indicated that the Commission questioned the benefits of such a table. Most comments also reflected this skepticism. For example CPB, the organization that originally requested a table, now believes that any benefits to be gained from a table have been lost with the passing of time. Many commenters noted that within the largest markets, little spectrum remains to be allotted, and that the area with available spectrum are better served by the demand system. Accordingly, we will not adopt an assignment table for NCE–FM stations.

7. Another aspect of this issue concerns the maximum power levels for stations within the reserved portion of FM band.[3] Currently, these stations have no specified power and antenna height limitations. The rules only state that facilities requested above the commercial limits "will not be necessarily granted." The *Second Notice* proposed to adopt the same power and antenna height limits as the commercial classifications. Comments regarding this proposal were supportive, and no other limits were suggested. Therefore, the commercial power and antenna height limitations will be adopted as the standard for NCE–FM stations also. [See BC Docket No. 80–90; 48 FR 29486 on June 27, 1983]. Any existing NCE–FM stations that are already at greater facilities than the commercial maximums will be grandfathered.

Issue 2: Interference Remedies

8. *TV Receiver Selectivity Standards.* In the *Second Notice,* we discussed at length the ability of television receivers, when tuned to Channel 6, to reject unwanted NCE–FM signals. The Commission noted that much of the interference resulted because of the inability of television receivers to reject adjacent channel interference adequately. Public radio interests agreed and argued that the problem could be solved by the use of more selective TV receivers. Others stated that although improved rejection capability would help, receiver standards would not "cure" the most severe cases of interference.

9. At the outset we would again point out that receiver improvements clearly do not represent a short-term solution to the problem. Therefore, in the first instance we are relying on the assignment standards outlined in Issue 5 and to the extent those solutions are satisfactory, as we predict, government mandated receiver standards will not be required. Nevertheless, it is clear that over the long term, better receiver selectivity would reduce problems. At present, the EIA/CEG (Electronic Industries Association/Consumer Electronics Group), with Commission participation, is involved with developing voluntary standards specifically addressing the TV Channel 6 interference problem. The Commission considers this work essential because insufficient information is now available to allow the drafting of such standards. The EIA Committee should fill that void by providing guidance for improved receivers. If the industry, for whatever reasons, is unable or unwilling to set its own receiver standards, it may be necessary for the Commission to step in. While we would be reluctant to do so, it is clear that we have the statutory ability, and we will exercise that authority if necessary. [Pub. L. No. 97–259, 96 Stat. 1087, 1091–92, September 13, 1982, 47 U.S.C. § 302(a)(2)]. The Commission may, upon review, determine that voluntary compliance by receiver manufacturers with the EIA guidelines is appropriate and we may be able to begin relaxing the assignment criteria as market penetration of the improved receivers expands. Ultimately, we could also decide, for example, to provide interference protection only to those receivers meeting minimum interference standards.

10. *Collocation.* Commenters agreed, for the most part, that collocation is the preferred means of reducing interference to TV Channel 6 reception while allowing NCE–FM stations the highest possible power levels. Noncommercial FM interests were concerned as to whether or not TV–6 stations would allow them access to the TV antenna sites.

11. The *Second Notice* defined collocation as an NCE–FM station

[3] A petition for rulemaking filed by the Lunde Corporation, RM–1301, requests that the commercial FM Power limits for Class C stations be incorporated into the noncommercial FM rules. This topic is addressed in this rulemaking and, therefore, this petition is being dismissed as moot.

locating its transmitting antenna within one mile of a TV Channel 6 transmitting antenna. Most commenting parties argued that the one mile limit for collocation was too great. A study conducted for the Joint Comments determined a distance of 0.4 kilometers (0.25 mile) to be more appropriate.[4] Locating beyond this point, the study noted, "causes FM field strengths up to 12 to 13 dB above the threshold to cause interference." Therefore, based on the data submitted, we shall adopt 0.25 mile as the definition for collocation.

12. Although some suggested lower power levels than proposed in the *Second Notice*, the proposed values for collocated NCE–FM stations will be used. We believe that the power levels proposed offer satisfactory protection given the undesired-to-desired (U/D) rejection ratios cited in the *Second Notice* for each of the lower channels. Also, if there is a problem with a particular channel not affording adequate protection, as some comments alleged, any resulting interference can be alleviated by the use of other remedies. Further, the FM station still has an obligation to assist in satisfying complaints or reducing power.[5]

13. *Vertical Polarization.* A question was raised in the *Second Notice* as to the interference reducing benefits of NCE–FM stations to operate with vertical polarization. The majority of commenters supported vertical polarization as a means of minimizing interference. A study, submitted in the Joint Comments, determined the advantage to be expected by vertical polarization of an FM transmitting antenna. The Joint Comments proposed a figure of 16 db power allowance for FM stations employing vertical polarization and locating in rural areas, and a 10 db allowance for urban areas.

14. Although data on the effects of vertical polarization on NCE–FM coverage are scanty, the record supports allowing it as a means of avoiding NCE–FM stations interfering with TV–6 stations. The Commission, therefore, will permit its use and allow the effectiveness of vertical polarization to be proven in actual situations.[6] This rule change will provide NCE–FM stations with additional flexibility for minimizing interference problems. However, the record failed to contain detailed information on the effects of vertical polarization on the coverage areas of NCE–FM stations. Additional experimentation is encouraged in this area.

15. *Receiver Filters.* The *Second Notice* proposed that external filters attached to the TV receiver could provide as much as 20 dB protection on the higher channels. All commenters rejected this figure. Interestingly, some claimed better results while others indicated worse. Proponents of filters submitted frequently response curves of several filters showing as much as 60 dB attenuation of the interfering signal. They submitted case studies claiming success in eliminating nearly all cases of interference with the installation of filters costing $10.00 or less. In short, proponents claimed that filters do work, have worked in the past, and should be considered in any rules the Commission adopts.

16. Opponents of filter use submitted similar comments but drew opposite conclusions. The National Association of Broadcasters (NAB) submitted a major study which showed not only substantial attenuation of the interfering FM signal when using filters, but also a degradation (3–10 dB) of the TV–6 aural carrier and the color subcarrier. Opponents also stated that effective filters are only available for TV receivers having 75 ohm coaxial cable inputs (currently comprising 15–20% of the market). They claimed that an effective filter program would be excessively costly to the NCE–FM stations and/or the public. Thus, the opponents of filters believed that the marginal improvements in TV signal quality do not outweigh their financial burdens.

17. As experienced throughout this proceeding, the information on filters was again contradictory. Thus, we cannot adopt, with any degree of confidence, the proposed 20 dB improvement for filters outside a laboratory environment. By adopting flexible standards, however, we could let actual field situations resolve this question. Thus, we will leave it to the judgment of the NCE–FM applicant whether filters provide a viable option.

18. *Miscellaneous Solutions.* The Commission also notes that the NCE–FM applicants have many options for minimizing the interference to TV–6 stations. For example, the NCE–FM station could locate its transmitter so that the area of interference is in unsettled, or sparsely settled, areas.[7] The NCE–FM permittee may replace a lost, or severely degraded, TV–6 signal by providing a TV translator in the affected area(s). They may also wish to take into account the direction of TV receiving antennas and locate the NCE–FM transmitter site so as to minimize interference. On this point, the Joint Comments were especially instructive in pointing out that there are a panoply of interference reduction techniques available. It is our intention to prepare an Office of Science and Technology (OST) Bulletin to provide guidance on those techniques. Finally cable penetration, or other factors that might lower the numbers of TV–6 viewers affected may be considered.

Issue 3: Level of Interference Protection

19. To adequately evaluate this issue, we examined the record to note whether the interference problem between the NCE–FM stations and TV–6 stations is sufficiently widespread to warrant new assignment standards for NCE–FM stations. The basic assertion that NCE–FM stations can cause interference to TV–6 stations is unquestioned. The extent of that interference, however, is not well defined. Several case studies were filed by TV broadcast stations, most notably KOIN–TV, Portland, Oregon, which detailed a large number of public complaints. At the same time, many NCE–FM stations indicated few complaints have been received, and they claimed that most cases were easily rectified with the use of filters at the television receivers. National Public Radio (NPR) conducted a survey of its member stations asking them to define the extent of their interference. The majority believed it to be either non-existent or very limited. However, a sample of the Commission's Field Operations Bureau's files indicated that the problem, while not universal, can be severe in isolated cases and thus result in large numbers of complaints.

20. Noting the relatively few cases of interference with over 1,100 NCE–FM stations on the air, the Commission finds that the restrictive facilities contemplated by the *Second Notice* are not justified. However, we cannot ignore the fact that NCE–FM stations have the potential to cause severe interference to TV–6 stations.

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[4] Joint Comments submitted by a group of television industry representatives formed to study the impact of Docket 20735. This group, working with educational FM representatives, conducted technical studies and submitted their results as the "Ad Hoc Committee Report."

[5] The responsibilities of the FM permittee under program test authority will be discussed in detail later in this report.

[6] In addition to allowing vertical polarized NCE–FM antennas, we will also permit the vertical component of radiation of circular polarized FM antennas to exceed the horizontal component of radiation. Thus, the optimum mix of vertical to horizontal components can be selected to meet individual circumstances.

[7] In this regard, a companion proceeding which examined the interference experienced by TV and FM receivers in close proximity to transmitter sites ("FM blanketing") has made rule amendments to encourage this option. See *Report and Order* in BC Docket No. 82–186 also adopted this day.

21. The *Second Notice* proposed standards based on differing undesired-to-desired (U/D) rejection ratios for Channels 201–220. The ratios were chosen to provide "just perceptible" interference to a "passable" TV picture quality of −65 dBm signal strength.[8] The TV–6 interests, rejecting this figure, were concerned that more than "just perceptible" interference could be caused to "fine" or "excellent" pictures. No data was presented, however, to alter our view that "fine" or "excellent" pictures could tolerate somewhat more than "just perceptible" interference without serious picture degradation. Therefore, we will use the −65 dBm signal strength universally as the basis for our interference standards. We recognize that TV–6 viewers, depending on the strengths of their TV–6 and NCE–FM signals, will experience differing degrees of loss in picture quality.[9] However, the record shows that the NCE–FM stations should be able to remedy most of the viewer dissatisfaction through application of corrective techniques. In the extreme case, the NCE–FM station would have to reduce power or terminate operations.

Issue 4: Interference Prediction

22. Many commenters were critical of the "effective interference" approach proposed in the *Second Notice* and noted that the TVINT program did not include the necessary functions to compute the true impact of interference.[10] A report submitted by the Joint Comments notes that the user of the computer program is responsible for the assumptions necessary to predict service and interference in both the manual and automated process. Therefore, it claims the TVINT program does not offer any advantages to the traditional method. Furthermore, the report states that effective interference is undermined by several technical defects, such as, the assumption of a zero correlation coefficient for location and time based on path differences between the desired and undesired signals. Finally, it argues that the inability of TVINT and effective interference to denote what area will experience interference is a step backward from the traditional method which does.

23. Additional comments from TV–6 interests stated the effective interference model constitutes a distorted view of reality. The Joint Comments used the TVINT program to analyze existing situations. It showed marked differences in the square mileage of interference predicted using effective interference, traditional method, and field study. Noting these differences, commenters claimed that the facilities proposed would cause interference in excess of that predicted using the TVINT and effective interference model.

24. The NCE–FM commenters also discussed the deficiences of the TVINT program. CPB stated that the program lacks essential items such as: the population within TV Channel 6's Grade B contour, the availability of the TV Channel 6 programming from alternate sources, or whether the FM signal is vertically polarized. Some commenters argued that the model is only a good mathematical exercise, but does not describe areas with a high probability of interference.

25. The Commission recognizes that the TVINT program is not all encompassing (as with any model). However, the primary advantage of the TVINT program and the effective interference concept is that all locations susceptible to interference can be taken into account. The traditional method only considers an area wherein 50% or more locations are predicted to receive an interfering signal. Therefore, it does not account for the loss of service throughout the whole Grade B service area. Also, a location inside the traditional interference area may be receiving better TV–6 service than expected and would not lose service as predicted. Therefore, the traditional method only begins to state where interference may occur. In addition, it usually does not include items such as population, alternative services, etc.

26. The Commission finds the effective interference method offers a more accurate prediction of the total area that will receive interference for a specified probability of service. In this case, the TVINT program predicts a statistical probability of service and interference. It was not designed to judge the reasonableness, accuracy, or honesty of the data supplied by the user. Making the user responsible for these assumptions allows flexibility to look at the relative effects of different station facilities in a short period of time. Also, TVINT is capable of considering population if the user chooses to provide the data. Further, we expect any attempt to devise an acceptable correlation coefficient for location and time differences between the TV and FM signals would not only be unreliable but would tend to understate the amount of interference predicted. For these reasons, we continue to believe the effective interference model and the TVINT program to be the best method for predicting the total interference effect.

Issue 5: The Solution

27. The *Second Notice* proposed to minimize the interference to TV–6 stations by limiting the power of NCE–FM stations. Using the TVINT computer program, a value of effective interference was chosen which would limit interference but still allow authorization of some non-collocated NCE–FM stations.[11] The Commission proposed a figure of 0.3 square miles of effective interference as accomplishing this goal. Using the 0.3 square mile figure, maximum facilities for NCE–FM stations located at various distances from the TV–6 station were proposed.

28. CPB, NPR, and others argued that permitting only 0.3 square miles of allowable interference was unduly restrictive. These commenters cited the figures given in the *Second Notice* showing that 40% of all applications on file would be affected, not to mention the impact on future applications. Their positions were that two adjacent television channels (low band) located at the minimum distance separation of 60 miles and operating with maximum facilities would cause 1,098 square miles of mutual effective interference. They argued that the NCE–FM band should be considered an upper adjacent channel to TV–6; thereby, they claimed that the FM stations should be allowed more than 0.3 square miles of effective interference.

29. Because the attenuation for band-reject filters appeared excessive at 20 dB (see paragraph 17), further computer studies were made for various effective interference levels using a more conservative 5 dB general allowance for various remedies.[12] The three areas of

[8] Definitions for picture quality are found in *Engineering Aspects of Television Allocations* Report of the Television Allocations Study Organization (TASO) to the Federal Communications Commission, March 16, 1959. A "passable" picture is of acceptable quality with no objectionable interference.

[9] The aural signal of the TV–6 station may also experience some degradation. This was taken into account since the U/D ratios are based on interference to picture or sound, whichever occurred first. See FCC/OST Lab Report No. 79–01 (Tests of TV Receivers for *"Just Perceptible" Interference to TV Channel 6 from Educational FM Signals*), September, 1979.

[10] TVINT is a computer program developed for the prediction of interference. It is capable of predicting interference by the traditional method or by the effective interference method. See FCC/OST Report No. TM 82–2 titled *"A Program to Calculate Effective Interference"*, July, 1982, by Harry Wong.

[11] The studies of the *Second Notice* used the U/D ratios based on a signal strength of −65 dBm and allowed 20 dB attenuation for band reject filters.

[12] Using the TVINT program the following runs were made:

Continued

effective interference considered were 0.3, 1.0, and 3.0 square miles. Using the TVINT program, we determined where "Low Power" and small "Class A" NCE–FM stations would not be able to locate.[13] The results showed that if the 0.3 square mile of effective interference was adopted, not even a low power (100 W and 100 feet) NCE–FM station could locate within the Grade B service area of a TV–6 station (approximately 12,000 square miles for each of the 50 TV–6 stations now operating). Only marginal improvements in availability were found for an effective interference area of 1.0 square mile. Adoption of either of these figures would essentially prevent NCE–FM stations from locating east of the Mississippi River. Only the 3.0 square mile figure offered any potential of permitting additional NCE–FM stations to be established.

30. The Commission, in the *Second Notice*, recognized that "[i]t is necessary to strike a balance between the conflicting goals of limiting TV Channel 6 interference and providing for a viable educational FM service."[14] The 0.3 square mile of effective interference was chosen as satisfying this goal. However, we now know that adopting standards based on this amount of effective interference would effectively preclude any new NCE–FM service within most, if not all, populated areas. Given that most TV–6 stations' Grade B contours cover approximately 12,000 square miles, the Commission finds that 3.0 square mile of effective interference does not appear excessive. To base the new standards on less than 3.0 square miles of effective interference would curtail the NCE–FM service to a greater degree than can be justified by the record.

31. Conversely, permitting more than 3.0 square miles could result in interference to too many people. Several comments pointed out that the amount of permissible interference should be based on population rather than area. The Commission must reject this suggestion because it could lead to arguments on interference areas, population counts, and gain versus loss benefits. These are the very issues that make the AM processing so time consuming and cumbersome. However, we do agree that the analysis is not complete until the impact on TV–6 viewers is better defined. Wishing to translate 3.0 square miles into number of viewers, the Commission determined the number of TV households per square mile for the "Area of Dominant Influence" (ADI) of 48 TV–6 stations.[15] We found that the number of TV households per square mile ranged from a low of 1.5 TV households/square mile for Hayes Center, Nebraska to a high of 276 TV households/square mile for Philadelphia, Pennsylvania. Our examination yielded a median number of 63 TV households as losing service for 3.0 square miles of effective interference. Rather than adopting standards to account for the worst case, the median figure will be used as representative; although, unique instances may require case-by-case analysis of what may be considered excessive interferences. Further, this figure is substantially less than the population (between 1,000 and 3,000 persons) that was submitted as acceptable by the Joint Comments.

32. Having established the allowable interference level, we may now proceed with development of the solution. Because collocation of the NCE–FM and TV Channel 6 transmitters is highly desirable, the new rules provide an incentive for collocation. As stated earlier, stations will be considered collocated if their antennas are within 0.25 mile. NCE–FM stations that choose to collocate will be permitted relatively large facilities as compared to other locations within the TV Channel 6 Grade A or Grade B contours. The specific power levels authorized are shown in Appendix A, Table A. Interference to TV–6 stations should be minimal if the NCE–FM station operates at the recommended level. However, since we cannot be certain that a few serious cases could not occur, we reserve the right to deal with such instances on a case-by-case basis which may necessitate, as one option, a reduction in power below the Level 1 values.

33. Non-collocated NCE–FM stations will be restricted in power based on their frequencies (channels), distances from the TV Channel 6 stations, and TV–6 facilities. The extent of the power restriction zone will end at 140 miles from the nearest TV Channel 6 station.[16] Basically, two power levels will be permitted for each station, a recommended level (Level 1) and a maximum level (Level 2). For stations on Channels 201–206, the Level 1 and Level 2 powers will be equal due to the greater potential of these channels to cause interferences to TV Channel 6. Any NCE–FM station unable to resolve its interference problems may be required to significantly reduce power, even down to Level 1.

34. The permitted Level 1 powers may be determined from Appendix A, Table B. The value in Table B must then be adjusted for the frequency of the proposed station by the value shown in Appendix A, Table C. The final calculated effective radiated power is that power which should cause interference to no more than 3.0 square miles of the TV Channel 6 service area. Although NCE–FM applicants or permittees assume no financial responsibility at this level to correct interference problems, the power level assumes application of 5 dB of remedies which are left to the NCE–FM applicant's choice (e.g., prudent location of the FM transmitter).

35. NCE–FM stations requesting Channels 207–220 will also be permitted a higher power level (Level 2). These values also appear in Table B and must be adjusted by the values in Table C. It is expected that several of the available remedies can be employed at the Level 2 power to eliminate interference to the TV Channel 6 stations. NCE–FM stations choosing this higher power level will assume full financial responsibility for eliminating all cases of interference. This may be accomplished by application of remedies, such as, vertical polarization of the FM antenna, installation of a TV translator, etc.

36. No stations will be allowed to be constructed in areas in which the recommended power level would be less than 100 watts. This is an annular area about the TV Channel 6 transmitter, usually within the Grade B contour. Because stations applying for Level 2 powers may be required to reduce to Level 1 powers, Level 1 powers must be at least 100 watts. The 100 watt minimum is consistent with the Commission's belief that stations operating below this level are not

a. TV–6 facilities were set at 100 kW and 1000 feet HAAT, no vertical pattern was assumed, and average terrain roughness was used.

b. Two sets of NCE–FM facilities were set at: 1. a minimal sized station of 100 Watts and 100 feet HAAT, and 2. a small sized station of 3 kW and 328 feet HAAT; no vertical pattern assumed, and average terrain roughness.

c. Set 1 and Set 2 runs were made for Channels 203, 211, and 217.

d. Protection Ratios, R(Q), of −6.5, −26.0, and −34.0 for Channels 203, 211, and 217, respectively were chosen.

e. The separation distance was varied for all runs from 1 mile to 140 miles.

[13] For the studies, we selected the minimum power (100 W) and the smallest class (3 kW @ 100 meters) permitted commercial stations. The greater facilities of the larger commercial classifications would have less availability.

[14] See *Second Notice* at paragraph 19.

[15] *1983–1984 ADI Market Guide for Television*, Arbitron Ratings Company, 1984.

[16] Comments were submitted requesting reduction of the 140 mile separation distance. However, it is possible for a full powered FM station on Channel 201 to cause interference at distances slightly greater than 140 miles. Therefore, the 140 mile limit will be adopted.

spectrally efficient. Although the *Second Notice* requested comments on this, we have found no basis for reinstating these subminimum facilities.

37. All of the power levels calculated assume an antenna height of 100 feet above average terrain. If higher antennas are used, then appropriate reductions in effective radiated power (ERP) must be made so that the 1 mV/m contour of the NCE–FM station will not be extended beyond that for a 100 foot antenna. However, power reductions below 100 watts ERP will not be authorized to meet this requirement.

38. An NCE–FM applicant must include in its application for a construction permit (Form 340) an exhibit of where interference is likely to occur (using traditional standards or the effective interference model) and a discussion of what plans have been made to remedy this interference.[17] An applicant will be granted a conditional Construction Permit (CP) denoting that program testing can take place only in close cooperation with FCC Field Operations Bureau (FOB) offices, TV–6 stations, and local community groups. The NCE–FM station, including those operating collocated with a TV–6 station, must take corrective measures to alleviate any cases of interference before licensing. If operating above the recommended level (above Level 1), then *all* non-exempt interference within the TV–6 station's Grade B contour must be remedied. Outside the Grade B contour area, the NCE–FM stations must provide useful information on possible solutions and other services as appropriate. Under the new rules, permittees will be monitored closely by the Engineers In Charge (EIC) of FOB field offices. EICs will have the discretion to alleviate excessive interference problems by limiting Program Test Authority to a specific length of time (i.e., days, weeks, months, etc.). When the interference is within reasonable bounds the NCE–FM station must supplement its license application to indicate is compliance (noted by the EIC) with the interference reduction rules. Permittees will be exempt from resolving interference to malfunctioning or mistuned receivers, improperly installed antenna systems, use of antenna booster amplifiers, or to associated non-rf devices. (See FCC OPP Report *UHF Reception and Television Preamplifiers*, April, 1981.)

39. It must be emphasized that NCE–FM stations are being granted the ability to engineer individual situations to minimize potential interference and remedy actual problems. The options to minimize interference are left to the permittee but may, in the most severe cases, necessitate a reduction in power. Consequently, these rules should minimize interference to TV–6 stations while permitting the maximum freedom to expand the NCE–FM service. At the same time, this approach induces the educational station to minimize its total number of interference cases. The greater the interference potential caused by large facilities, the more responsibility is required by the rules. It is, therefore, in the NCE–FM applicant's interest to be very conservative in requesting facilities and to take all steps to insure minimal intererence.

40. The licensing policies for NCE–FM stations operating under the new rules will be as follows:

A Conditional Construction Permit will be issued which alerts the NCE–FM applicant to the interference reponsibilities,

Before program tests are authorized, the permittee must notify the Field Operations Bureau's field office of the steps taken to alert the local community of possible interference on TV Channel 6 reception,

Before the license is granted, the permittee must supplement the application for license with a discussion of its actions to supply information to all reasonable complaints and its attempts to remedy all cases of interference to TV Channel 6 stations, and

Before the license is granted, the permittee must submit an affidavit (noted by the EIC) that at least 2 months of program testing has occurred and all non-exempt complaints (as defined in the rules) have been satisfied. [This condition of satisfying all complaints would apply to those stations with greater than Level 1 facilities.]

Sample Calculation

41. Assume an applicant desires to construct a station on Channel 215 at a distance of 40 miles from a TV Channel 6 station. The first step in the calculation is to determine the field strength of the TV–6 station at the proposed site. A TV–6 station operating at 100 kW with an antenna height of 1000 feet above average terrain would have a predicted field strength of 63.6 dBu at 40 miles. Using that value, Table B indicates an ERP (Level 1) of −3.34 dBk (463 watts), at 100 feet antenna height. From Table C a +6 dB frequency factor may be applied. This yields a final Level 1 ERP of 2.66 dBk (1.85 kW) at 100 feet. Likewise, a Level 2 power of 17.66 dBk (58.34 kW) can be computed. If the applicant chose to use an antenna height of greater than 100 feet above average terrain (HAAT), Level 1 or Level 2 values would have to be appropriately reduced to assure that the 1mV/m contour was not extended beyond that for the 100 foot HAAT.

Grandfathering

42. The *Second Notice* proposed to grandfather all existing stations at their present facilities. It questioned whether a station should be allowed to modify its license if it did not increase the total interference, but shifted the interference to a different geographic location.

43. Most commenters generally accepted the grandfathering of existing stations. The notable exception was KOIN–TV, a TV Channel 6 station which is currently receiving interference from a noncommercial FM station. It urged the Commission to take no action which would either legitimize or perpetuate existing interference. KOIN–TV sought a policy of requiring interfering stations to make an honest engineering effort to rectify interference before receiving grandfathered status. Although we share this concern of allowing interference to continue, we decline to mandate additional burdens to existing FM licensees. We do expect, however, all NCE–FM stations to take steps (such as educating the public) to minimize excessive interference.

44. Commenters were generally opposed to the idea of shifting the interference burden from one group of people to another. TV Channel 6 interests believed it unfair to shift the interference from one geographic area to another, even if there was a reduction in the total number of people who received interference. They proposed that the affected TV–6 station be consulted whenever an educational FM station seeks to upgrade or change its facilities.

45. Upon reflection, we agree that it would be unfair to shift interference from one geographic area to another. Therefore, any upgrade or modification which will increase or shift the area receiving interference will be considered under the new rules. To permit some license modifications, however, we will permit those changes that would not aggravate the existing interference.

Miscellaneous Matters

46. In the *Second Notice*, we also proposed to eliminate an anomaly in the NCE–FM station rules. Currently, § 73.509 states that objectionable interference between two NCE–FM stations exists if the undesired signal exceeds the desired by certain undesired-to-desired (U/D) signal ratios at the desired station's 1 mV/m contour.

[17] NCE–FM stations should try to minimize interference, for example, when selecting their tower location, to the reception of low power television (LPTV) and TV translator stations operating on Channel 6; however, protection will not be required. Any LPTV or TV translator station that has to move because of interference received from a new NCE–FM station may apply for a special temporary authorization (STA) until final disposition of their license modification.

In the case of second and third adjacent channels, where the undesired signal can be stronger than the desired signal, an adjacent channel station located within the desired station's 1 mV/m contour can appear to comply with the U/D ratios at the 1 mV/m contour. However, it may actually cause excessive interference inside the 1 mV/m contour. Further, the U/D ratio appears to improve as the undesired station moves closer to the desired station's transmitter and away from the 1 mV/m contour. The *Second Notice* proposed to resolve the anomaly by simply specifying prohibited contour overlaps. Comments were supportive. Therefore, we shall adopt that option.

Summary

47. The rules contained in Appendix A reflect the need for flexibility. The record shows that there exist varying degrees of interference to TV Channel 6 reception from NCE–FM stations, and a variety of solutions available to resolve the interference. To attempt to account for all of these situations in tightly formulated standards would be unreasonable. The approach chosen allows the assignment of noncommercial FM facilities where the applicant must "engineer in" facilities that will cause minimum interference. NCE–FM applicants can choose their levels of operation and financial responsibilities based on individual circumstances. Likewise, TV Channel 6 interests can be assured of a minimum interference impact.

48. The Commission stresses that the degree that any specific technique (*i.e.*, vertical polarization, etc.) will alleviate interference has not been determined. We have left that issue to be explored by the NCE–FM applicants. Also, we do not wish to imply that various situations will be reviewed by the Commission for specific power authorizations. The exact options that NCE–FM applicants may exercise are solely their decisions. The rules only reflect the Commission's desire to ensure minimal television interference while permitting the expansion of the NCE–FM service.

49. Finally, the Commission acknowledges that the assignment standards being adopted represent an attempt to allow the industry to explore interference reducing techniques and to encourage voluntary improvements to television receivers (see paragraph 9). The Commission will monitor the effects of the rules adopted today (with specific interest in the number of complaints generated, effectiveness of remedial techniques, and establishment of voluntary receiver standards). Further, the Mass Media Bureau is directed to prepare for the Commission's consideration, no later than three years from the date of release of this order, a staff report (Memorandum, Opinion and Order) containing a recommendation whether the new rules, and specifically Levels 1 and 2 power values, are appropriate as adopted.

50. *Regulatory Flexibility Final Analysis.*

I. *Reason for action.* To prevent exacerbation of the interference problem created when a new noncommercial educational FM station operates in a Television Channel 6 service area.

II. *Objective.* To further develop the noncommercial educational FM service with minimal loss of Television Channel 6 service.

III. *Legal basis.* Sections 303(r) and 4(i) of the Communications Act of 1934, as amended.

IV. *Description, potential impact and number of small entities affected.* The rules herein adopted will provide assignment standards for noncommercial educational FM stations. These rules are expected to allow for growth in educational broadcasting services, while maintaining present Television Channel 6 service.

There is no significant impact expected on present Television Channel 6 licensees or future applicants for Channel 6 stations. These rules limit future noncommercial FM facilities located within a Television Channel 6 service area; thereby, reducing their potential to cause interference. This reduced service area could adversely affect available financial support for noncommercial educational FM stations. These new rules also permit the use of filters, vertical polarization, or other remedies, which could permit increases in noncommercial educational FM service areas.

The positive impact of the new rules would be to help the noncommercial educational FM licensee to circumvent interference problems. In sum, the adoption of these rules will generally limit the size of new noncommercial educational FM stations and make upgrading of many existing stations in Channel 6 TV service areas more difficult. However, the new rules will permit many stations on the air that would otherwise have been forbidden.

V. *Recording, record-keeping and other compliance requirements.* None.

VI. *Federal rules which overlap, duplicate or conflict with this rule.* None.

VII. *Any significant alternative minimizing the impact on small entities and consistent with the stated objective.* None.

Actions

51. The Secretary shall cause a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. *et seq.*).

52. Accordingly, It is ordered, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that Part 73 of the Commission's Rules and Regulations is amended effective as of January 1, 1985, as set forth in the attached Appendix A.

53. It is further ordered, that RM–1301 is denied as being rendered moot by this proceeding.

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

55. For further information on this matter, contact Kathryn Hosford, Mass Media Bureau, at (202) 632–9660.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Title 47 CFR Part 73 is amended as follows:

1. 47 CFR § 73.509 is revised in its entirety to read as follows:

§ 73.509 Prohibited overlap.

(a) An application for a non-Class D (secondary) station, whether for a new station or an application for a change in a station, will not be accepted if the proposed operation would involve overlap of signal strength contours with any other station whose transmitter is located more than 320 kilometers (199 miles) from the U.S.-Mexican border and operating in the reserved band (Channels 200–220, inclusive) as set forth below:

Frequency separation	Contour of proposed station	Contour of other station
Co-channel	0.1 mV/m (40 dBu)	1 mV/m (60 dBu)
	1 mV/m (60 dBu)	0.1 mV/m (40 dBu)
200 kHz	0.5 mV/m (54 dBu)	1 mV/m (60 dBu)
	1 mV/m (60 dBu)	0.5 mV/m (54 dBu)
400 kHz	10 mV/m (80 dBu)	1 mV/m (60 dBu)
	1 mV/m (60 dBu)	10 mV/m (80 dBu)
600 kHz	100 mV/m (100 dBu)	1 mV/m (60 dBu)
	1 mV/m (60 dBu)	100 mV/m (100 dBu)

(b) An application by a Class D (secondary) station, other than an

application to change class, will not be accepted if the proposed operation would involve overlap of signal strength contours with any other station as set forth below:

Frequency separation	Contour of proposed station	Contour of other station
Co-channel	0.1 mV/m (40 dBu)	1 mV/m (60 dBu)
200 kHz	0.5 mV/m (54 dBu)	1 mV/m (60 dBu)
400 kHz	10 mV/m (80 dBu)	1 mV/m (60 dBu)
600 kHz	100 mV/m (100 dBu).	1 mV/m (60 dBu)

(c) The following standards shall be used to compute the distances to the pertinent contours:

(1) The distance of the 60 dBu (1 mV/m) contours shall be computed using Figure 1 of § 73.333 [F(50, 50) curves] of this Part.

(2) The distance to the other contours shall be computed using Figure 1a of § 73.333 [F(50,10) curves] of this Chapter. In the event that the distance to the contour is below 16 kilometers (10 miles), and therefore not covered by Figure 1a, the curves in Figure 1 must be used.

(3) The effective radiated power (ERP) that is the maximum ERP for any plane on any bearing will be used.

(d) An application for a change (other than a change in channel) in the facilities of a noncommerical educational FM broadcast station will be accepted even though overlap of signal strength contours, as specified in paragraphs (a) and (b) of this Section, would occur with another station in an area where such overlap does not already exist, if:

(1) The total area of overlap with that station would not be increased;

(2) There would be no net increase in the area of overlap with any other station;

(3) The area of overlap does not move significantly closer to the station receiving the overlap; and,

(4) There would be created no area of overlap with any station with which the overlap does not now exist.

(e) The provisions of this Section concerning prohibited overlap will not apply where the area of such overlap lies entirely over water.

2. 47 CFR 73.511 is revised in its entirety to read as follows:

§ 73.511 Power and antenna height requirements.

(a) Except as provided in § 73.504 (b), on Channels 201 to 220, inclusive specified in § 73.501, no educational station will be authorized with effective radiated power less than specified in § 73.211(a)(1).

(b) On Channels 201 to 220, inclusive specified in § 73.501, no educational station will be authorized with effective radiated power greater than specified in § 73.211 (b)(2).

(c) Stations licensed before January 1, 1985, and operating above 50 kW in Zones I and I–A, and above 100 kW and in Zone II may continue to operate as authorized.

Note.—For educational stations authorized before January 1, 1985, the provisions of this Section [§ 73.511] become effective March 1, 1987.

3. A new 47 CFR 73.525 entitled "TV Channel 6 Protection" is added to read as follows:

§ 73.525 TV Channel 6 protection.

(a) Noncommercial, educational FM stations authorized as of January 1, 1985, may not make changes in operating facilities or location that result in any increase or shift in interference without considering the requirements of this section. Further, a FM station authorized as of January 1, 1985, which seeks to improve its operation may request to return to its previous, or lesser, facilities without considering the requirements of this section.

(b) An application for a FM station operating on Channels 201–220 and located at 0.4 kilometers (approximately 0.25 mile) or less from a TV Channel 6 station will not be accepted if the antenna height above average terrain (HAAT) exceeds the TV Channel 6 station's HAAT by more than 30 meters (approximately 100 feet) or the effective radiated power exceeds the following values:

TABLE A

Educational FM channel	Effective radiated power (dBk)
201	0.5
202	3.7
203	4.9
204	7.0
205	9.2
206	11.4
207	13.5
208	15.7
209	17.9
210–220	20.0

(c) An application for a FM station operating on Channels 201–220 and located more than 0.4 kilometers but less than 225 kilometers (approximately 0.25 miles and 140 miles) from a TV Channel 6 transmitting antenna will not be accepted if it exceeds the maximum facilities allowed as determined in the following steps:

(1) Calculate the distance to the authorized TV Channel 6 station by use of the method set forth in § 73.208(c) of this part.

(2) Predict TV Channel 6 field strength at the proposed FM transmitter site by use of the distance determined in paragraph (c)(1), the authorized effective radiated power (without considering beam tilt), and the antenna height above average terrain of the TV Channel 6 station, and Figure 1 of § 73.333 [F(50,50) curves] of this Part. [To avoid difficulties due to the differences in units, the curves of § 73.333 will be used for TV Channel 6 stations also. The field strength curves for FM and TV Channel 6 are identical.]

(3) Obtain, for the TV Channel 6 field strength determined in subparagraph (2), the uncorrected allowed power from column denoted ERP_1 for Channels 201–220 or ERP_2 for Channels 207–220 in the following Table B. If the TV Channel 6 field strength determined in paragraph (c)(2) does not correspond exactly with a field strength in the table, linear interpolation shall be used. If the TV Channel 6 field strength in paragraph (c)(2) is greater than 90 dBu, then the initial power shall be the value corresponding to a TV Channel 6 field strength of 90 dBu.

TABLE B

TV channel 6 station F(50,50) field strength (dBu)	Permitted FM station ERP (dBk) @ 30 Meters (100 feet) HAAT for operation on channel 211	
	ERP_1 (recommended level) (channels 201–220)	ERP_2 (maximum level) (channels 207–220)
90.0	20.0	35.0
85.0	13.5	28.5
80.0	8.0	23.0
75.0	3.0	18.0
70.0	1.0	16.0
65.0	−2.0	13.0
60.0	−6.8	8.2
55.0	−11.5	3.5
50.0	−16.0	−1.0
49.0	−17.0	−2.0
48.0	−14.0	1.0
47.0	−9.5	5.5
46.0	−4.0	11.0
45.0	0.0	15.0
40.0	14.5	29.5
35.0	22.0	37.0
30.0	30.0	45.0
20.0	47.0	63.0
10.0	63.0	78.0

(4) Add the value from the following Table C, corresponding to the requested channel, to the value determined in paragraph (c)(3). This will provide the maximum allowable ERP_1 or ERP_2 at an antenna height of 30 meters HAAT.

TABLE C

FM channel	Frequency (MHz)	Power adjustment (dB)
201	88.1	−20.0
202	88.3	−17.2
203	88.5	−14.5
204	88.7	−11.7
205	88.9	−9.0
206	89.1	−4.5
207	89.3	0

TABLE C—Continued

FM channel	Frequency (MHz)	Power adjustment (dB)
208	89.5	0
209	89.7	0
210	89.9	0
211	90.1	0
212	90.3	+0.8
213	90.5	+1.5
214	90.7	+3.8
215	90.9	+6.0
216	91.1	+7.0
217	91.3	+8.0
218	91.5	+11.5
219	91.7	+15.0
220	91.9	+18.0

(5) If the antenna height above average terrain of the requested facility is greater than 30 meters (approximately 100 feet), reduce the maximum allowable power determined in paragraph (c)(4) by the amount necessary to result in an equivalent predicted field strength, pursuant to the following procedures:

(i) The effective radiated power is reduced so that the distance to the 1 mV/m (60 dBu) contour extends no farther than it would if the station were operating with the allowable power and an antenna HAAT of 30 meters.

(ii) The location of the 1mV/m (60 dBu) contour is determined using Figure 1 of § 73.333 [F(50,50) curves] of this Part.

(iii) The antenna HAAT is determined using the procedure contained in § 73.313.

(d) The maximum facilities cannot exceed 50 kW effective radiated power and 300 meters in Zones I and Ia or 100 kW effective radiated power and 600 meters height above average terrain in Zone II. [See § 73.511 of this part.]

(e) An application for a facility operating on Channels 201–220 and located more than 0.4 kilometers but less than 225 kilometers (approximately 0.25 miles and 140 miles) from a TV Channel 6 transmitting antenna will not be accepted if the recommended level is less than 100 watts (–10 dBk) at 30 meters.

(f) An application for a facility operating on Channels 201–220 and located less than 225 kilometers (approximately 140 miles) from a TV Channel 6 transmitting antenna must include an indication of any interference to the reception of the TV Channel 6 signals by the public. When the requested facilities exceed the recommended values (see paragraph (c)(3) of this Section), the application must also include a discussion of the techniques to minimize interference that are contemplated by the applicant.

(g) A permittee, before beginning program tests, must take steps to notify the residents of the area likely to be affected of the possibility of interference and what remedies will be available. Additionally, the Engineer in Charge of the responsible FCC field office must be advised of what alleviating steps have been taken and when program tests will commence.

(h) FM permittees operating at the recommended levels, or below, have no financial obligation to remedy interference complaints; however, within the television station's 47 dBu (Grade B) contour, the permittee must investigate all separately registered and documented complaints and make a good faith attempt to identify and help resolve all cases of interference to the direct reception of the TV Channel 6 station that results from the operation of the FM station operating on Channels 201–220. Exceptions to this provision are complaints of interference due to malfunctioning or mistuned receivers, improperly installed antenna systems, use of antenna booster amplifiers, or to associated non-RF devices (such as audio amplifiers, etc). If the complainant refuses to demonstrate the impaired reception or permit the application of remedial techniques, the permittee is absolved from further responsibility.

(i) If the effective radiated power of the facility exceeds the recommended level, a license will not be granted unless all non-exempt (See subparagraph h) interference complaints have been resolved at no cost to the TV Channel 6 viewers within the TV Channel 6, 47 dBu (Grade B) contour. The distance to the television station's 47 dBu (Grade B) contour is determined by using Figure 1 of § 73.333 [F(50,50) curves] of this Part.

(j) Outside of the television station's 47 dBu (Grade B) contour, a permittee is to provide information intended to remedy interference to TV Channel 6, at the request of the TV Channel 6 viewer. The permittee has no financial responsibility to resolve such complaints.

(k) If interference is excessive and it cannot be promptly eliminated by the application of suitable techniques, operation of the offending FM station will be suspended upon notification by the Engineer In Charge (EIC) of the Commission's local field office, and may not be resumed until satisfactory actions to eliminate the interference have been taken and authority to resume operation has been received from the FCC.

(l) To minimize interference to TV Channel 6 stations from FM stations operating on Channels 201–220, the vertical component of radiation of the FM station may exceed its horizontal component of radiation, or the FM station may use only vertical polarization. The maximum ERP on any bearing will be considered the maximum ERP for any plane for licensing purposes (including vertical or horizontal polarization, beam tilt, etc.).

(m) A permittee will not be granted a station license without a minimum of 2 months operation under Program Test Authority. The permittee shall supplement the application for station license, by submitting a statement indicating that appropriate action has been taken on all complaints of interference to TV Channel 6 reception. For operation above the recommended level, the statement shall indicate that all non-exempt complaints (see paragraph (h) have been resolved at no cost to the complainants. The application shall contain a concurring statement from the Engineer in Charge of the responsible FCC field office to indicate that he/she has no objections to the granting of a station license.

(n) No application for FM Channel 200 will be accepted if the requested facility would cause objectionable interference to Channel 6 operations. Such objectionable interference will be considered to exist whenever the 15 dBu contour based on the F(50,10) curves on § 73.333 Figure 1a of the proposal would overlap the 40 dBu contour based on the F(50,50) curves in § 73.333 Figure 1, of the televison station.

§ 73.4135 [Removed]

4. 47 CFR 73.4135 is removed in its entirety.

Appendix B

Summary of Commenting Parties

Comments in response to the *Second Notice* were filed by a number of parties. Detailed comments on all aspects of the *Second Notice* were submitted by: Jules Cohen & Associates ("Cohen"), Corporation for Public Broadcasting ("CPB"), Association of Maximum Service Telecasters, Inc. ("AMST"), National Public Radio ("NPR"), Mississippi Authority for Educational Television ("MAET"), KOIN–TV, Inc. ("KOIN"), Joint Comments filed on behalf of TV Channel 6 interests, National Associations of Broadcasters ("NAB"), Capital Cities Communications, Inc., Cosmos Broadcasting Corp., also McGraw-Hill Broadcasting Company ("McGraw-Hill").

Specific comments on isolated subjects were filed by: Intercolligiate Broadcasting System, Inc., KRMA–TV Channel 6, WCDR–FM, Earlam College, Storer Communications, Taft Broadcasting Company, Federation of Community Broadcasters, National Religious Broadcasters ("NRB"), Channel 6, Inc. ("Channel 6"), and Michigan State University ("MSU").

Various general comments were submitted by: Viewers of Central Virginia, University of Northern Colorado, Friends of Public Radio,

Inc., Bux-Mont Educational Radio Association, Metropolitan Pittsburg Public Broadcasting (WQED–FM, WQEX–TV), and several existing educational and TV Channel 6 radio licensees.

Reply comments were filed by: CBS, Inc., Mohawk-Hudson, Taft, MAET, NPR, NRB, WTVR, EIA (CEG), Belo Broadcasting, KOIN, McGraw-Hill, Joint Comments, CPB, other existing radio licensees, and TV Channel 6 licensees.

[FR Doc. 84–29948 Filed 11–14–84; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 74

[MM Docket No. 84–280; FCC 84–517]

Broadcast Remote Pickup Service; Amendment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action changes the Broadcast Remote Pickup Service Rules to (1) authorize 5 kHz segments which can be combined to form a suitable bandwidths for different technologies; (2) revise authorized emission standards; (3) continue informal BRPS frequency coordination; (4) allow narrowband VHF repeaters; (5) remove usage restrictions on certain channels; and (6) eliminate requirements for guard receivers for BRPS repeaters.

This action is taken by the Commission in its efforts to relax restrictive regulations and policies and allow new spectrum efficient systems to be licensed.

The Rule changes are intended to provide broadcasters more flexibility in their choices of Remote Pickup communications systems. This action will also permit the use of new narrowband technology equipment as a means to relieve frequency congestion situations.

DATES: Effective—To be announced by separate Order.

FOR FURTHER INFORMATION CONTACT: Hank Van Deursen, Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 74

Communications equipment.

Report and Order

In the Matter of Amendment of frequency assignment procedures in the Broadcast Remote Pickup Service to facilitate more efficient use of the available spectrum; MM Docket No. 84–280.

Adopted: October 26, 1984.
Released: November 6, 1984.

By the Commission.

Introduction

1. The Commission has under consideration a *Notice of Proposed Rule Making (Notice)* [1] adopted on March 23, 1984, and the comments and reply comments filed in response thereto, concerning a proposal to permit optional use of narrow band technologies and the Broadcast Remote Pickup Service (BRPS). The *Notice* proposed amending the frequency assignment procedures and authorized emission standards. Although this *Order* allows immediate use of Amplitude Compandored Sideband (ACSB) equipment, it by no means limits licensees to that technology nor does it preclude the use of FM technologies. For example, 2.5 kHz deviation FM communications equipment is presently in use in Europe and could also be used in the BRPS with the rule changes adopted today. This *Order* is intended to be sufficiently flexible to allow broadcasters to choose any technology best suited to their needs without further Commission action.

Background

2. Remote pickup (RPU) stations are authorized frequencies in the 153, 161, and 450 MHz bands [2] for transmission of program audio from the scene of an event back to the studio. They may also be used for communications necessary to coordinate production of program material and support technical operation. The ever increasing demand for remote pickup stations has created a growing need for spectrum to support these additional stations. Because there is not any readily available spectrum to provide relief, more efficient use of the present spectrum must be pursued. In fact, several waivers have already been granted by the Commission to allow splitting of RPU channels to provide additional services.[3]

Issues

3. The primary issues proposed in the *Notice* included:

(1) Should the Commission amend the frequency authorization procedures to include 5 kHz segments which could be contiguously combined (stacked) to provide suitable channel bandwidths for existing and new technologies?

(2) Should the authorized emission standards be revised to accommodate new technologies as they may develop?

(3) Should the present BRPS informal frequency coodination procedures continue on a voluntary basis in lieu of formal procedures?

(4) Should VHF repeaters be authorized for narrow bandwidth technologies?

(5) Should usage restrictions on certain channels be removed?

Issue 1: Frequency Authorization Procedures

4. The *Notice* proposed dividing many existing channels into discrete 5 kHz segments to provide the BRPS flexibility to combine contiguous segments into a channel of suitable bandwidth. This action would permit continued use of all current wideband FM equipment in addition to allowing users to incorporate narrow bandwidth technologies. For example, a current VHF 30 kHz bandwidth RPU channel would become a channel of six contiguous 5 kHz segments. Alternatively, channels for narrow bandwidth technologies would be immediately available by combining the appropriate number of contiguous segments to form a channel with suitable bandwidth.

5. Several commenters in opposition to the issue apparently misinterpreted the *Notice* and believed that present wideband FM operation would no longer be permitted. This is not the case. Wideband FM operation may continue as circumstances warrant. Our action provides broadcasters *the option* of operating narrower bandwidth equipment, if they desire, to obtain partial relief from the crowded spectrum in congested areas. Comments submitted by the American Petroleum Institute (API), although concerned about increased BRPS operations on the 153 MHz shared channels, endorse the 5 kHz plan if expansion of the band is deemed necessary. The Association of Maximum Service Telecasters (MST), in its reply comments, suggest that API has overlooked the potential benefits that could accrue to land mobile users from the Commission's proposals. By providing more "room" for all current and future users in the shared bands, the creation of new narrowband channels could decrease interference problems.

6. Several comments were received emphasizing the need to retain some channels with bandwidths of 25, 50, and 100 kHz bandwidths for transmission of high-quality material for on-the-air use. Although these comments may have merit for a few channels, the record indicates that dividing the remaining channels into 5 kHz "stackable" segments as proposed in the *Notice* and eliminating the present "letter group" designations on channels would be beneficial. However, licensees are expected to make efficient use of the spectrum by stacking the minimum number of segments necessary to create

[1] MM Docket No. 84–280, 49 FR 14986 (April 16, 1984).

[2] Nominal frequency bands—see Part 74.402 for specific frequencies.

[3] See *Notice* at 4.

a channel bandwidth commensurate with the technology in use.

7. Although specific frequencies will not be mandated for narrowband technologies, frequency coordinators should be aware of the Office of Science and Technology findings which indicate that the mechanism for ACSB to FM interference was more dependent upon FM receiver characteristics then on the ACSB transmitter.[4] Coordinators should proceed cautiously and responsibly when integrating new technologies into the existing FM environment. On-the-air program channels must be afforded the necessary protection even if this requires frequency separation of narrowband technologies from the program channels. Prudent action on the part of the coordinators will eliminate need for the Commission to institute specific restrictions on the frequency assignment of new technologies at this time.

8. In the interest of providing broadcasters the maximum flexibility and choice in the selection of channels for operation of remote pickup stations:

A. The two existing 100 kHz channels at 450.925 and 455.925 MHz (previously referred to as the "S group" channels) will be divided into four 50 kHz segments. Stacking of these segments will be allowed to form 100 kHz channels, thus preserving the option of 100 kHz channels where required. This action is intended to satisfy the needs of users committed to transmitting high quality program material using wideband technologies requiring 50 or 100 kHz. Users committed to 100 kHz bandwidths and transmitting program material will have primary user of these channels since no other 100 kHz channels are available.

B. The ten existing 50 kHz channels at 450.65, 450.70, 450.75, 450.80, 450.85, 455.65, 455.70, 455.75, 455.80, and 455.85 MHz (previously referred to as the "R group" channels) will be divided into twenty 25 kHz segments. Stacking of these segments will be permitted to form 50 kHz channels. Users committed to 50 kHz bandwidths and transmitting program material will have primary use of these channels.

C. Most remaining VHF and UHF channels will be divided into 5 kHz segments which may be stacked to form various bandwidth channels up to the maximum channel bandwidth of 50 kHz. This division will enable implementation of Option 2 (Six channel VHF plan) and Option 3 (Five channel UHF plan) as proposed in the *Notice*. (The six channel UHF plan is unacceptable since it would require that no assignments be made at the edges of wideband channels resulting in possible unusable spectrum.)

D. All letter group designations for channels are being deleted permitting licensees to operate on any channel for which they are eligible. This action will eliminate the present requirement that the same station be licensed separately for each group of frequencies that it operates on. Subsequently, all RPU operations will be covered under one license.

Issue 2: Emission Limitations

9. Emission limitations control the amount of interference an adjacent channel user will experience. Two distinctly different forms of emissions are involved in this issue (emission measurement techniques will be addressed in a future OST bulletin):

A. Traditional frequency modulated signals with various maximum deviation limits.

$$\text{Attenuation} = 29 \text{ Log } \left[\frac{25}{11}\left(D + 2.5 - \frac{W}{2}\right)^2\right] \text{dB}$$

or 50 dB whichever is the lesser attenuation. Where: D is the displacement (kHz) from the center of the authorized bandwidth; and W is the channel bandwidth (kHz).

B. On any frequency removed from the channel edge by more than 2500 Hz: At least 43+10 Log (P) dB.

Issue 3: Frequency Coordination

12. API was concerned with the issue of frequency coordination and suggested that formal procedures be adopted which are similar to those for services in Part 90 of the Rules. Consistent with the decision in Docket 20189 not to impose formal frequency coordination procedures on the BRPS,[8] no formal procedures are being adopted in this *Order*. The channels between 152.855 and 153.365 MHz (previously referred to as the K1 channels) are shared with the Industrial Radio Service. BRPS licensees are secondary to Industrial Radio users on these frequencies and must correct any interference caused to Industrial Radio stations or cease operation. Furthermore, BRPS licensees must accept any interference caused by Industrial Radio stations. It is important that the Industrial Radio users be considered and be made aware of any BRPS activity on the shared channels.

13. All other comments addressing the issue of frequency coordination supported the present informal coordination procedures that have worked well for the BRPS in the past. Numerous references were made to the many voluntary Local Frequency Coordinating Committees (LFCC) and highly cooperative efforts of the broadcasters to make the fullest use of the scarce BRPS spectrum. These efforts include real-time frequency coordination during events when many channels are required to be shared, voluntary channel splitting in some congested areas,

B. Single sideband type signals with various bandwidth requirements (initial use is expected to be 5 kHz voice ACSB equipment).

10. Comments from Sideband Technology Inc. (STI) favored adopting the emission standards are proposed in the Private Radio item [5] for all RPU equipment. Changing the present emission standards for FM equipment was not proposed in the *Notice* and therefore is not appropriate at this time. To accommodate both FM and SSB type technologies, dual emission masks will be employed similar to those in the microwave bands.[6] The present emission standards for FM equipment will remain unchanged and new emission standards will be adopted for single sideband (SSB) equipment.[7]

11. For other than FM technology equipment, a modified version of the above referenced emission mask is adopted. Emissions will be attenuated below the peak envelope power (P):

A. On any frequency 500 Hz inside the channel edge up to and including 2500 Hz outside the same channel edge, the following formula will apply:

[4] See FCC/OST TM-83-7, Amplitude Compandored Sideband Compared to Conventional Frequency Modulation for VHF Mobile Radio—Laboratory and Field Testing Results, Hank VanDeursen and Ralph Haller, October 1983, NTIS number PB84-116383, available from the National Technical Information Service, Springfield, Virginia.

[5] See *Comments of Sideband Technology*, para. 9; and also *Notice of Proposed Rule Making*, PR Docket No. 84-279, 49 FR 19074, (May 4, 1984).

[6] See, for example, Section 74.637.

[7] The emission standard proposed in the Private Radio item covered only 5 kHz bandwidth SSB equipment. Since it is contemplated that wider bandwidth SSB equipment may be required in the BRPS to provide program quality transmission, the formula for that emission standard was expanded to the general case, and is applicable for any bandwidth equipment.

[8] See *Report and Order* at 11.

request for waivers to operate narrowband technology equipment, and maintenance of local data bases for the coordination process. Another important argument presented by many parties is that local users are in the most advantageous position to determine the most efficient use of the spectrum with their knowledge of local terrain, general requirements, calendars of events, etc.

14. Support in favor of informal frequency coordination was overwhelming in the record. Broadcasters and LFCC's are to be commended for their appropriate efforts and the Commission will continue to rely on the present method of informal frequency coordination.

Issue 4: Narrow Bandwidth VHF Repeaters

15. Favorable comments were submitted concerning allowing the use of narrowband technology VHF repeaters. Although a repeater requires two channels, the total spectrum requirements for a 5 kHz bandwidth system will be only 10 kHz which is substantially less than the present 25 or 30 kHz present FM simplex channels. It is therefore appropriate to allow the operation of VHF repeaters which are capable of operating with a 5 kHz bandwidth technology. The repeaters may be installed in vehicles or at fixed sites.

Issue 5: Usage Restrictions on Certain Channels

16. Although many comments were received urging the removal of the "program only" usage restriction on the present R and S group channels, the record contains considerable concern for protection of on-the-air program material with an availability of channels having adequate bandwidth to provide acceptable transmission quality. Some comments indicated that the priority requirements of 74.403(b)[9] serve the same purpose, provided that the user with on-the-air material has immediate access to the channel when required. It appears that the present priority requirements should be sufficient to protect channels required for on-the-air program material. The restrictions which allow only program material and related cues on certain channels (the present R and S groups) will therefore be removed. Users will be expected to coordinate locally the use of channels in such a way that the appropriate protection is afforded to transmission of on-the-air material.

[9] Priority order: 1. Emergency communications; 2. Program material to be broadcast; 3. Cues and orders necessary for a broadcast; 4. Operational communications; and 5. Tests or drills.

Related Issue: Repeater Guard Receiver

17. Although the *Notice* did not specifically address this issue, the Society of Broadcast Engineers (SBE), in its comments, questioned the practicality of Section 74.436 which requires that a guard receiver "lock-out" the repeater if a signal is present on the repeater output frequency. Their comments indicate that: (1) Other services do not require guard receivers on repeaters; and (2) these receivers cause numerous operational problems at congested repeater sites where white noise, exceeding the 2 uV sensitivity level, spills over from adjacent channel transmitters. No opposition to the SBE's comments was noted in the reply comments. Therefore, the requirement for a guard receiver on BRPS repeaters will be deleted from § 74.436 of the *Rules*.

18. *Regulatory Flexibility Final Analysis.*

I. *Reason for action:* The current Rules restrict ways that broadcasters can implement new spectrum efficient technologies. Commission action such as a Developmental License or special waiver is now required for use of such equipment.

II. *The objective:* The Commission's proposals are designed to provide broadcast licensees more freedom to choose and implement new technologies in their efforts to make the most efficient use of the RPU spectrum.

III. *Legal basis:* Action is proposed in accordance with sections 303 (g) and (r) of the Communications Act of 1934, as amended, which charges the Commission to encourage the most effective use of radio in the public interest.

IV. *Description, potential impact, and number of small entities affected:* The proposed Rule changes should favorably affect broadcasters and spectrum efficient equipment manufacturers. No costs need be incurred by any broadcaster as a result of this action. The action provides opportunities for radio equipment manufacturers to sell new narrow band equipment.

V. *Recording, recordkeeping, and other compliance requirements:* None.

VI. *Federal Rules which overlap, duplicate, or conflict with this rule:* None.

VII. *Any significant alternatives minimizing impact on small entities and consistent with the stated objective:* The Commission's alternative is to maintain status quo. This alternative would not accomplish the beneficial objectives sought in this *Notice*.

Actions

19. The Secretary shall cause a copy of this *Report and Order*, including the initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.*)

20. Accordingly, it is ordered, pursuant to the authority contained in Sections 4(i), 302, and 303 (g) and (r) of the Communications Act of 1934, as amended, that Part 74 of the Commission's Rules and Regulations are amended as set forth in the attached Appendix B, effective on the date specified in a future order to be issued by the Chief, Mass Media Bureau indicating that appropriate computer programs are available for implementing the new rules.

21. Further information on this proceeding may be obtained by contacting Hank VanDeursen, Mass Media Bureau, (202) 632-9660.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Comments and/or reply comments were received from the following:

American Broadcasting Companies, Inc.
American Petroleum Institute
Association of Maximum Service Telecasters
CBS, Inc.
Mututal Broadcasting System (KDUZ)
National Association of Broadcasters
National Broadcasting Company, Inc.
National Radio Broadcasters Association
Sideband Technology, Inc.
Society of Broadcast Engineers
Special Industrial Radio Service Association, Inc.
Stephens Engineering Associates, Inc.
WFME Family Stations, Inc.
William F. Ruck, Jr. (KUSF-FM)
960 Radio, Inc.

Appendix B

PART 74—[AMENDED]

Part 74 of the Federal Communications Commission's Rules and Regulations are amended as follows:

1. Section 74.402 is amended by revising the section in its entirety to read as follows:

§ 74.402 Authorized frequencies.

Operation on all channels listed in this section (except: 26.07, 26.11, 26.45, 450.01, 450.02, 450.98, 450.99, 455.01, 455.02, 455.98, 455.99 MHz) shall be in accordance with the "priority of use" provisions in § 74.403(b). The channel will be assigned by its center frequency, channel bandwidth, and emission designator. The frequencies listed in this section represent the center of the channel or channel segment.

(a) The following channels (except 1606, 1622, and 1646 kHz) may be assigned for us by broadcast remote pickup stations using any emission (other than single sideband or pulse) that will be in accordance with the provisions of § 74.462. The channels 1606, 1622, and 1646 kHz are limited to A3E emission.

(1) MF Channels: 1606, 1622, and 1646 kHz; Maximum authorized channel bandwidth: 10 kHz; The channel 1606 kHz is subject to the condition listed in subparagraph (e)(1) of this Section.

(2) HF Channels: 25.87, 25.91, 25.95, 25.99, 26.03, 26.07, 26.09, 2.611, 26.13, 26.15, 26.17, 26.21, 26.23, 26.25, 26.27, 26.29, 26.31, 26.33, 26.35, 26.37, 26.39, 26.41, 26.43, 26.45, and 26.47 MHz; Maximum authorized channel bandwidth: 20 kHz, except the channels 25.87–26.03 MHz are 40 kHz; The channels 25.87–26.09 MHz are subject to the condition listed in subparagraph (e)(2) of this Section.

(3) VHF Channels: 166.25 and 170.15 MHz; Maximum authorized channel bandwidth: 25 kHz; These channels are subject to the condition listed in subparagraph (e)(8) of this Section.

(4) UHF Channels: 450.01, 450.02, 450.98, 450.99, 455.01, 455.02, 455.98, 455.99 MHz; Maximum authorized channel bandwidth: 10 kHz; These channels are subject to the condition listed in subparagraph (e)(9) of this Section.

(b) One or more of the following 5 kHz segments my be stacked to form a channel which may be assigned for use by broadcast remote pickup stations using any emission contained within the resultant channel in accordance with the provisions of § 74.462.

(1) VHF segments: 152.8575, 152.8625, 152.8675, 152.8725, 152.8775, 152.8825, 152.9175, 152.9225, 152.9275, 152.9325, 152.9375, 152.9425, 152.9775, 152.9825, 152.9875, 152.9925, 152.9975, 153.0025, 153.0375, 153.0425, 153.0475, 153.0525, 153.0575, 153.0625, 153.0975, 153.1025, 153.1075, 153.1125, 153.1175, 153.1225, 153.1575, 153.1625, 153.1675, 153.1725, 153.1775, 153.1825, 153.2175, 153.2225, 153.2275, 153.2325, 153.2375, 153.2425, 153.2775, 153.2825, 153.2875, 153.2925, 153.2975, 153.3025, 153.3375, 153.3425, 153.3475, 153.3525, 153.3575, and 153.362 MHz; Maximum authorized channel bandwidth: 30 kHz; These channels are subject to the conditions listed in paragraphs (e) (3), (4), and (5) of this section.

(2) VHF segments: 160.8625, 160.8675, 160.8725, 160.8775, 160.8825, 160.8875, 160.8925, 160.8975, 160.9025, 160.9075, 160.9125, 160.9175, 160.9225, 160.9275, 160.9325, 160.9375, 160.9425, 160.9475, 160.9525, 160.9575, 160.9625, 160.9675, 160.9725, 160.9775, 160.9825, 160.9875, 160.9925, 160.9975, 161.0025, 161.0075, 161.0125, 161.0175, 161.0225, 161.0275, 161.0325, 161.0375, 161.0425, 161.0475, 161.0525, 161.0575, 161.0625, 161.0675, 161.0725, 161.0775, 161.0825, 161.0875, 161.0925, 161.0975, 161.1025, 161.1075, 161.1125, 161.1175, 161.1225, 161.1275, 161.1325, 161.1375, 161.1425, 161.1475, 161.1525, 161.1575, 161.1625, 161.1675, 161.1725, 161.1775, 161.1825, 161.1875, 161.1925, 161.1975, 161.2025, 161.2075, 161.2125, 161.2175, 161.2225, 161.2275, 161.2325, 161.2375, 161.2425, 161.2475, 161.2525, 161.2575, 161.2625, 161.2675, 161.2725, 161.2775, 161.2825, 161.2875, 161.2925, 161.2975, 161.3025, 161.3075, 161.3125, 161.3175, 161.3225, 161.3275, 161.3325, 161.3375, 161.3425, 161.3475, 161.3525, 161.3575, 161.3625, 161.3675, 161.3725, 161.3775, 161.3825, 161.3875, 161.3925, and 161.3975 MHz; Maximum authorized channel bandwidth: 30 kHz; These channels are subject to the condition listed in paragraph (e)(6) of this section.

(3) VHS segments: 161.6275, 161.6325, 161.6375, 161.6425, 161.6475, 161.6525, 161.6575, 161.6625, 161.6675, 161.6725, 161.6775, 161.6825, 161.6875, 161.6925, 161.6975, 161.7025, 161.7075, 161.7125, 161.7175, 161.7225, 161.7275, 161.7325, 161.7375, 161.7425, 161.7475, 161.7525, 161.7575, 161.7625, 161.7675, and 161.7725 MHz; Maximum authorized channel bandwidth: 30 kHz; These channels are subject to the conditions listed in paragraphs (e) (4) and (7) of this section.

(4) UHF segments: 450.0275, 450.0325, 450.0375, 450.0425, 450.0475, 450.0525, 450.0575, 450.0625, 450.0675, 450.0725, 450.0775, 450.0825, 450.0875, 450.0925, 450.0975, 450.1025, 450.1075, 450.1125, 450.1175, 450.1225, 450.1275, 450.1325, 450.1375, 450.1425, 450.1475, 450.1525, 450.1575, 450.1625, 450.1675, 450.1725, 450.1775, 450.1825, 450.1875, 450.1925, 450.1975, 450.2025, 450.2075, 450.2125, 450.2175, 450.2225, 450.2275, 450.2325, 450.2375, 450.2425, 450.2475, 450.2525, 450.2575, 450.2625, 450.2675, 450.2725, 450.2775, 450.2825, 450.2875, 450.2925, 450.2975, 450.3025, 450.3075, 450.3125, 450.3175, 450.3225, 450.3275, 450.3325, 450.3375, 450.3425, 450.3475, 450.3525, 450.3575, 450.3625, 450.3675, 450.3725, 450.3775, 450.3825, 450.3875, 450.3925, 450.3975, 450.4025, 450.4075, 450.4125, 450.4175, 450.4225, 450.4275, 450.4325, 450.4375, 450.4425, 450.4475, 450.4525, 450.4575, 450.4625, 450.4675, 450.4725, 450.4775, 450.4825, 450.4875, 450.4925, 450.4975, 450.5025, 450.5075, 450.5125, 450.5175, 450.5225, 450.5275, 450.5325, 450.5375, 450.5425, 450.5475, 450.5525, 450.5575, 450.5625, 450.5675, 450.5725, 450.5775, 450.5825, 450.5875, 450.5925, 450.5975, 450.6025, 450.6075, 450.6125, 450.6175, 450.6225, 455.0275, 455.0325, 455.0375, 455.0425, 455.0475, 455.0525, 455.0575, 455.0625, 455.0675, 455.0725, 455.0775, 455.0825, 455.0875, 455.0925, 455.0975, 455.1025, 455.1075, 455.1125, 455.1175, 455.1225, 455.1275, 455.1325, 455.1375, 455.1425, 455.1475, 455.1525, 455.1575, 455.1625, 455.1675, 455.1725, 455.1775, 455.1825, 455.1875, 455.1925, 455.1975, 455.2025, 455.2075, 455.2125, 455.2175, 455.2225, 455.2275, 455.2325, 455.2375, 455.2425, 455.2475, 455.2525, 455.2575, 455.2625, 455.2675, 455.2725, 455.2775, 455.2825, 455.2875, 455.2925, 455.2975, 455.3025, 455.3075, 455.3125, 455.3175, 455.3225, 455.3275, 455.3325, 455.3375, 455.3425, 455.3475, 455.3525, 455.3575, 455.3625, 455.3675, 455.3725, 455.3775, 455.3825, 455.3875, 455.3925, 455.3975, 455.4025, 455.4075, 455.4125, 455.4175, 455.4225, 455.4275, 455.4325, 455.4375, 455.4425, 455.4475, 455.4525, 455.4575, 455.4625, 455.4675, 455.4725, 455.4775, 455.4825, 455.4875, 455.4925, 455.4975, 455.5025, 455.5075, 455.5125, 455.5175, 455.5225, 455.5275, 455.5325, 455.5375, 455.5425, 455.5475, 455.5525, 455.5575, 455.5625, 455.5675, 455.5725, 455.5775, 455.5825, 455.5875, 455.5925, 455.5975, 455.6025, 455.6075, 455.6125, 455.6175, 455.6225 MHz. Maximum authorized channel bandwidth: 50 kHz.

(c) One or two of the following 25 kHz segments may be stacked to form a channel which may be assigned for use by broadcast remote pickup stations using any emission contained within the resultant channel in accordance with the provisions of § 74.462. Users committed to 50 kHz bandwidths and transmitting program material will have primary use of these channels.

(1) UHF segments: 450.6375, 450.6625, 450.6875, 450.7125, 450.7375, 450.7625, 450.7875, 450.8125, 450.8375, 450.8625, 455.6375, 455.6625, 455.6875, 455.7125, 455.7375, 455.7625, 455.7875, 455.8125, 455.8375, 455.8625 MHz. Maximum authorized channel bandwidth: 50 kHz.

(d) One or two of the following 50 kHz segments may be stacked to form a channel which may be assigned for use by broadcast remote pickup stations using any emission contained within the resultant channel in accordance with the provisions of Section 74.462. Users committed to 100 kHz bandwidths and

transmitting program material will have primary use of these channels.

(1) UHF segments: 450.900, 450.950, 455.900, and 455.950 MHz; Maximum authorized channel bandwidth: 100 kHz.

(e) Conditions on Broadcast Remote Pickup Service channel usage as referred to in subparagraphs (a) through (d) above:

(1) Operation is subject to the condition that no harmful interference is caused to the reception of AM broadcast stations.

(2) Operation is subject to the condition that no harmful interference is caused to stations in the broadcast service.

(3) Operation is subject to the condition that no harmful interference is caused to stations operating in accordance with the Table of Frequency Allocations set forth in Part 2 of the Commission's Rules and Regulations. Applications for licenses to use frequencies in this band must include statements showing what procedures will be taken to ensure that interference will not be caused to stations in the Industrial Radio Services.

(4) These frequencies will not be licensed to network entities.

(5) These frequencies will not be authorized to new stations for use on board aircraft.

(6) These frequencies are allocated for assignment to broadcast remote pickup stations in Puerto Rico or the Virgin Islands only.

Note.—These frequencies are shared with Public Safety and Land Transportation Radio Services.

(7) These frequencies may not be used by broadcast remote pickup stations in Puerto Rico or the Virgin Islands. In other areas, certain existing stations in the Public Safety and Land Transportation Radio Services have been permitted to continue operation on these frequencies on condition that no harmful interference is caused to broadcast remote pickup stations.

(8) Operation on the frequencies 166.25 MHz and 170.15 MHz is not authorized: (i) Within the area bounded on the west by the Mississippi River, on the north by the parallel of latitude 37 degrees 30 minutes N., and radius equal to the air-line distance between Springfield, Ill., and Montgomery, Alabama, subtended between the foregoing west and north boundaries; (ii) Within 150 miles (241 KM) of New York City; and, (iii) In Alaska or outside the continental United States; and is subject to the condition that no harmful interference is caused radio stations in the band 162–174 MHz.

(9) The use of these frequencies is limited to operational communications, including tones for signaling and for remote control and automatic transmission system control and telemetry.

(f) License applicants shall request assignment of only those channels, both in number and bandwidth, necessary for satisfactory operation and for which the system is equipped to operate. However, it is not necessary that each transmitter within a system be equipped to operate on all frequencies authorized to that licensee.

(g) Remote pickup stations or systems will not be granted exclusive channel assignments. The same channel or channels may be assigned to other licensees in the same area. When such sharing is necessary, the provisions of § 74.403 shall apply.

(h) Each authorization for a new broadcast remote pickup station or system shall require the use of type accepted equipment.

2. Section 74.403 will be amended by revising paragraph (b) to read as follows:

§ 74.403 Frequency selection to avoid interference.

* * * * *

(b) The following order of priority of transmission shall be observed on all channels except: 26.07, 26.11, 26.45, 450.01, 450.02, 450.98, 450.99, 455.01, 455.02, 455.98, and 455.99 MHz:

* * * * *

3. Section 74.432 is amended by revising paragraphs (c) and (j) and subparagraphs (c)(1), (c)(2), and (c)(7) and (j) to read as follows:

§ 74.432 Licensing requirements and procedures.

* * * * *

(c) Remote pickup stations and systems will be licensed for use of a specified frequency as listed in § 74.402 as follows:

(1) Base stations may be licensed as automatic relay stations, and, as such, will be separately licensed. An automatic relay station will be licensed to operate only on frequencies within the UHF band. However, narrowband technology equipment with emissions contained within a 5 kHz channel may be authorized for use as a base or mobile automatic relay station on channels in the VHF band (except 166.25 and 170.15 MHz). Each automatic relay station shall be operated in accordance with the provisions of § 74.436. A licensee may be authorized to operate more than one automatic relay station; however, no more than two VHF and two UHF channels will be assigned a licensee for use by such stations in a single area. Automatic relay stations shall operate in accordance with the priorities prescribed in § 74.403(b).

(2) Base stations may be authorized to provide one-way or two-way voice communications between the studio and transmitter of a broadcast station, the licensee of which is also the licensee of any aural or television broadcast STL station used for program transmission between the same two points, or to provide such voice communications between the point of origin and the termination of an aural or television intercity relay system. Automatic relay systems will not be authorized for use with these systems. Operation of these systems shall be limited to the channels 26.07, 26.09, 26.11, 26.13, 26.45, and 26.47 MHz.

* * * * *

(7) One or more fixed stations operating on 450.01, 450.02, 450.98, 450.99, 455.01, 455.02, 455.98, and 455.99 MHz will be licensed as a system for control and telemetry signals between a remote control point and the broadcast site or between automatic transmission monitoring and alarm points and the broadcast site.

* * * * *

(j) A remote pickup station or system may be authorized solely for operational communications provided such operation is confined to the channels of 450.01, 450.02, 450.98, 450.99, 455.01, 455.02, 455.98, and 455.99 MHz.

* * * * *

4. Section 74.436 is amended by revising the introductory paragraph and paragraph (a) to read as follows:

§ 74.436 Special requirements for automatic relay stations.

An automatic relay station shall, in addition to the relay transmitter, include a control unit and one or more relay receivers.

(a) The licensee shall institute appropriate operating procedures to prevent interference to other stations operating on the automatic relay output channel.

* * * * *

5. Section 74.461 is amended by revising paragraph (a) to read as follows:

§74.461 Transmitter power.

(a) Transmitter power is the power at the transmitter output terminals and delivered to any impedance-matched, radio frequency load. For the purpose of this subpart, the transmitter power is the unmodulated carrier power except that

for SSB or pulse transmissions, peak envelope power shall be used.

* * * * *

6. Section 74.462 is amended by revising paragraph (c) introductory text, by deleting paragraph (e), by revising and redesignating the existing paragraph (d) as paragraph (e), and by adding a new paragraph (d) to read as follows:

§74.462 Authorized bandwidth and emissions.

* * * * *

(c) For all emissions except single sideband and pulse, the mean power of emissions shall be attenuated below the mean transmitter power in accordance with the following schedule:

* * * * *

(d) For single sideband and pulse signals, the peak power of emissions shall be attenuated below the transmitter power in accordance with the following schedule:

(1) On any frequency 502 Hz inside the channel edge up to and including 2500 Hz outside the same edge, the following formula will apply:

$$\text{Attenuation} = 29 \text{ Log } \left[\frac{25}{11} \left(D + 2.5 - \frac{W}{2} \right)^2 \right] \text{dB}$$

or 50 dB whichever is the lesser attenuation. Where: D is the displacement (kHz) from the center of the authorized bandwidth; and W is the channel bandwidth (kHz).

(2) On any frequency removed from the channel edge by more than 2500 Hz: At least 43+10 Log (P) dB.

(e) In the event a station's emissions outside its authorized channel cause harmful interference, the Commission may, at its discretion, require the licensee to take such further steps as may be necessary to eliminate the interference.

[FR Doc. 84-29911 Filed 11-14-84; 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; Determination of Endangered Status and Critical Habitat for the Amargosa Vole

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status and critical habitat for the Amargosa vole, a small mammal. This vole has been eliminated from portions of its range as a result of human encroachment and the burning and overgrazing of its habitat. It became so rare that it was once thought extinct, and is now known only from bulrush marshes near Tecopa and Tecopa Hot Springs in southeastern Inyo County, California. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for the Amargosa vole.

EFFECTIVE DATE: The effective date of this rule is December 17, 1984.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours, by appointment, at the Service's Regional Office, Lloyd 500 Building, Suite 1692, 500 Northeast Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne White at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The species *Microtus californicus*, commonly known as the California vole, is a small mammal occurring in western Oregon, California, and northern Baja California; 17 subspecies are currently recognized (Hall 1981). The apparently most geographically restricted subspecies is *M. c. scirpensis*, the Amargosa vole. It was described by Bailey (1900) from specimens collected at a spring near Shoshone on the Amargosa River, southeastern Inyo County, California. It is isolated from the rest of the species by a broad expanse of unsuitable, arid land. It differs from most other subspecies by its brighter coloration. The upper parts are pallid neutral gray, the underparts are smoky gray, the tail is brown above and grayish below, and the feet are brownish gray. In six adult specimens, total length averaged about 8 inches (203 millimeters) and tail length averaged about 2½ inches (65 millimeters).

Not long after its discovery, the Amargosa vole was extirpated from the Shoshone area; the marsh that it inhabited was burned over and made into a hog pasture (Kellogg 1918). The subspecies was considered extinct until additional specimens were collected in the 1930's, and then seemed to disappear again, but was rediscovered in the 1970's in marshes along the Amargosa River near Tecopa and Tecopa Hot Springs, southeastern Inyo County (Bleich 1979, 1980; Could and Bleich 1977). These marshes, the only currently known habitat of the Amargosa vole, are characterized by a dominance of bulrush (*Scirpus olneyi*) vegetation and have some open water nearby. In this otherwise arid part of California, bulrush marshes are restricted to the vicinity of springs or portions of the Amargosa River with permanent flow. This river is dry throughout most of its course. Human encroachment in the area, with consequent burning of marshes, overgrazing, and water diversion, is jeopardizing remnant habitat. Surviving colonies of voles are highly localized and contain small numbers of animals.

In the **Federal Register** of June 18, 1980 (45 FR 41172-41173), the Service published a notice accepting a petition to add the Amargosa vole to the U.S. List of Endangered and Threatened Wildlife, and announcing a status review of the animal. In the **Federal Register** of December 30, 1982 (47 FR 58454-58460), the Amargosa vole was included in category 1 of the Service's Review of Vertebrate Wildlife, meaning that there was substantial information on hand to support the biological appropriateness of a listing proposal. In the **Federal Register** of August 29, 1983 (48 FR 39090-39093), the Service published a proposed rule to determine endangered status and critical habitat for the Amargosa vole.

Summary of Comments and Recommendations

In the proposed rule of August 29, 1983, and associated notifications, all interested parties were requested to submit information that might contribute to development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, and other concerned parties were contacted and requested to comment. A newspaper notice, inviting public comment, was published in the *Los Angeles Times* on September 15, 1983.

Five comments were received. The California Department of Fish and Game, the California Department of Water Resources, and the Friends of Wildlife Organization (Monterey, California) supported the proposal. The California Department of Transportation observed that there are Federal-aid

roadways within the overall boundaries of the proposed critical habitat, upon which repair work might become necessary, and requested to be informed of precautions that should be taken during such work. The Service greatly appreciates this concern, and has expressed its willingness to provide guidelines to the California Department of Transportation as specific cases develop.

The District Manager, California Desert District, Bureau of Land Management (BLM), questioned whether Federal listing of the Amargosa vole is necessary, considering that two detailed management plans have been developed for protection of wildlife and associated habitat in the involved area, and that the Bureau is cooperating with the Service and the California Department of Fish and Game to prevent adverse impacts to the vole from geothermal leasing activity. Should listing proceed, the District Manager recommended that the following components of the proposed overall critical habitat zone be excluded, because they do not contain wetland habitats necessary to support vole populations: T 20 N R 7 E NE¼ and N½SE¼ Sec. 4, W½W½ Sec. 5, SW¼ Sec. 9, SW¼ Sec. 10; T 21 N R 7 E Sec. 20, N½, N½S½, and S½SE¼ Sec. 28, NE¼, NE¼SE¼, and W½ Sec. 29, W½ Sec. 32, N½NE¼, SE¼NE¼, and SE¼ Sec. 33.

The Service appreciates the efforts that BLM is making to protect the Amargosa vole and its habitat. However, management work being done by an agency is related to only one of the five factors discussed below that must be considered in making the determination of whether to add a species to the List of Endangered and Threatened Wildlife. The Amargosa vole was brought to the brink of extinction by a variety of problems, mostly not related to geothermal leasing or other activities by BLM. Federal listing will insure that protection is permanent, and will provide the basis for a coordinated recovery effort by all involved agencies. With regard to the critical habitat, the Service has reviewed the situation and now agrees that the following areas do not contain significant vole habitat: T 20 N R 7 E SW¼ Sec. 9, SW¼ Sec. 10; T 21 N R 7 E Sec. 20, N½ Sec. 28, NE¼ Sec. 29. These areas are thus not being included in the overall critical habitat zone designated for the Amargosa vole. The other areas indicated by BLM, however, do contain springs, marshes, or other elements needed for the survival of the vole, and are thus being retained in the critical habitat designation.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Amargosa vole should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 amendments—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Amargosa vole (*Microtus californicus scirpensis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Within the arid region in question, most human activity occurs near permanent water sources. Therefore, the marsh habitat of the Amargosa vole has been reduced and modified by human encroachment. Burning and livestock grazing is occurring in much of the habitat. The spring at Shoshone has been diverted and channelized to allow for construction of a high school swimming pool. The development of springs in the Tecopa Hot Springs area for mineral baths, and the spread of mobile home courts, have greatly modified or eliminated suitable habitat in that area. Such modification of springs and marshes has already caused the extinction of the Tecopa pupfish, a small fish endemic to the area (see **Federal Register** of January 15, 1982 (47 FR 2317–2319)).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be a problem.

C. *Disease or predation.* Not known to be a problem.

D. *The inadequacy of existing regulatory mechanisms.* The California State Fish and Game Commission lists the Amargosa vole as endangered and, therefore, regulations are in effect that prohibit taking. The main problem of the vole, however, is not direct taking, but loss of habitat. Moreover, although the Bureau of Land Management is taking the vole's well-being into account in developing its management plans for the area, there is a considerable amount of vole habitat outside of Federal ownership that thus remains unaffected by BLM planning.

E. *Other natural or manmade factors affecting its continued existence.* Competition from introduced species may have been a contributing factor in the decline of the Amargosa vole at Shoshone. The house mouse (*Mus musculus*) was reported by Bleich (1980) as very common in marsh habitats around Shoshone.

The decision to determine endangered status for the Amargosa vole was based on an assessment of the best available scientific information and of past, present, and probable future threats to the species. Critical habitat is being determined because it would be prudent to do so and because the areas of habitat utilized by the species are generally well defined.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that "critical habitat" be designated, "to the maximum extent prudent and determinable," concurrent with the determination that a species is endangered or threatened. Critical habitat, as defined by section 3 of the Act and at 50 CFR Part 424, means (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination that such areas are essential for the conservation of the species.

The critical habitat of the Amargosa vole falls within an overall zone of 4,520 acres in southeastern Inyo County, California. Within this zone, the critical habitat consists of marshes and associated land and water along the Amargosa River, from just north of Tecopa Hot Springs to the Amargosa Canyon, just south of Tecopa.

In considering designation of critical habitat, 50 CFR 424.12(b) requires focus on the biological or physical constituent elements within the defined area that are essential to the conservation of the species involved. With respect to the Amargosa vole, the areas designated as critical habitat satisfy all known criteria for the ecological, behaviorial, and physiological requirements of the species. The marsh vegetation (primarily bulrush) provides sufficient cover for escape from predators and also serves as a food source. Small populations of

the Amargosa vole are still able to survive and reproduce in the remaining suitable marsh habitat around Tecopa and Tecopa Hot Springs. These areas may not, however, include the entire habitat of the Amargosa vole, and modifications to the critical habitat designation may be proposed in the future.

Section 4(b)(8) of the Act requires that, to the maximum extent practicable, any determination of critical habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be affected by such designation. In the case of the Amargosa vole, such activities including burning or otherwise removing marsh vegetation, overgrazing of marsh or adjacent vegetation, pumping of ground water supplies, diverting or channelizing springs or the Amargosa River, road repair work, off-road vehicle use in or adjacent to marsh areas, use of herbicides or rodenticides, introduction of exotic plant or animal species, and exploration for and exploitation of geothermal resources.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of specifying a particular area as critical habitat. In conjunction with the proposal to determine endangered status and critical habitat for the Amargosa vole, the Service notified Federal agencies that may have jurisdiction over the involved areas. These agencies and other interested parties were requested to submit information on economic or other impacts of the proposed measure. In response, the District Manager, California District, Bureau of Land Management (BLM) indicated that determination of endangered status and critical habitat for the Amargosa vole would result in consultation between BLM and the Service regarding the effects of geothermal leasing activity.

Additional information obtained by the Service indicates that approximately 2,060 acres of the overall critical habitat zone are administered by BLM. Neither the critical habitat zone nor immediately surrounding lands are now known to contain geothermal resources. However, three leases for geothermal exploration in the area have been issued by BLM, and applications for four others are under consideration. The three current leases are not active and are not expected by BLM to become a threat to the critical habitat. The four lease applications have stipulations to avoid disturbance of the habitat of proposed or listed endangered or threatened species. In addition, BLM already has detailed management plans for the protection of wildlife and associated habitat in the involved area. For these reasons, designation of critical habitat is not expected to have significant economic or other impacts.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for land acquisition and cooperation with States, and requires recovery actions. Such actions are initiated by the Service following listing. The protection required by Federal agencies, and taking and harm prohibitions, are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal in **Federal Register** of June 29, 1983, 48 FR 29989). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities that may be affected in this regard, with respect to the determination of endangered status for the Amargosa vole, are described above under "Critical Habitat."

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions that apply to all endangered wildlife. These prohibitions, in part, will make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale any Amargosa vole in interstate or foreign commerce. It also will be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions will apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Endangered species can be taken for scientific purposes, to enhance the propagation or survival of the species, or for incidental take purposes. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

The Service will now review the Amargosa vole to determine whether it should be considered for placement upon the Annex of the Convention on Nature Protection in the Western Hemisphere, and whether it should be considered for other appropriate international agreements.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that his designation 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.*). These determinations are based on a Determination of Effects that is available at the Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

References

Bailey, V. 1900. Revision of American voles of the genus *Microtus*. N. Amer. Fauna 17:1–88.

Bleich, V.C. 1979. *Microtus californicus scirpensis* not extinct. J. Mamm. 60:851–852

Bleich, V.C. 1980. Amargosa vole study. Final report to California Dept. Fish and Game, W–54–R–10, 8 pp.

California Department of Fish and Game. 1980. At the crossroads 1980—a report on California's endangered and rare fish and wildlife. 147 pp.

Gould, G.I., and V.C. Bleich. 1977. Amargosa vole study. Report to California Dept. Fish and Game, W-54-R-9, 4 pp.

Hall, E.R. 1981. The mammals of North America. John Wiley and Sons, New York, 2 Vols.

Kellogg, R. 1918. A review of the *Microtus californicus* group of meadow mice. Univ. California Publ. Zool. 21:1-42.

Author

The primary author of this rule is Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975 or FTS 235-1975).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Section 17.11(h) is amended by adding the following, in alphabetical order, to the List of Endangered and Threatened Wildlife under "MAMMALS:"

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Vole, Amargosa	*Microtus californicus scirpensis*	U.S.A. (CA)	Entire	E	166	17.95(a)	NA
*	*	*	*	*	*	*	

3. Section 17.95(a), "Mammals," is amended by adding the critical habitat of the Amargosa vole after that of the Morro Bay kangaroo rat as follows:

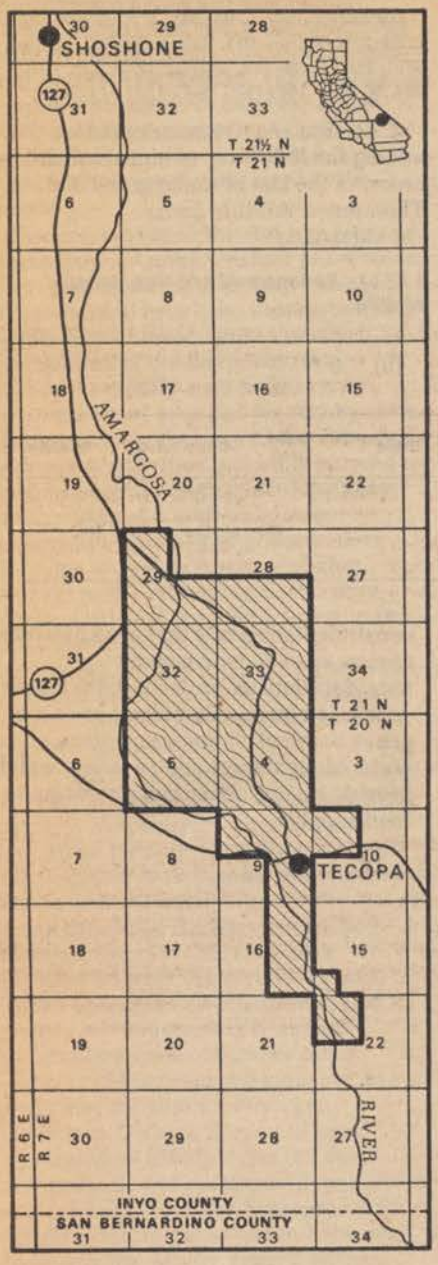
§ 17.95 Critical habitat—fish and wildlife.

(a) * * *

Amargosa vole (*Microtus californicus scirpensis*).

California. Marshes and associated land and water in the following areas of Inyo County (San Bernardino Meridian): T20N R7E Sec. 4, 5, N½ and SE¼ Sec. 9, NW¼ Sec. 10, SW¼SW¼ Sec. 15, E½ Sec. 16, NW¼ Sec. 22; T21N R7E S½ Sec. 28, S½ and NW¼ Sec. 29, Sec. 32, 33.

Within these areas, the major constituent elements that are known to require special management considerations or protection are marsh vegetation (primarily bulrushes of the genus *Scirpus*), springs, and some open water along the Amargosa River, which provide escape cover and an adequate food supply.



* * * * *

Dated: September 25, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-29999 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 41048-4148]

Atlantic Surf Clam and Ocean Quahog Fisheries

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

ACTION: Notice of emergency change in annual specification.

SUMMARY: NOAA issues a notice of emergency change in an annual specification for the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP). This action increases the annually selected 1984 Mid-Atlantic surf clam quota by 200,000 bushels, from 2,350,000 to 2,550,000 bushels. This action is intended to prevent a lengthy closure in the Mid-Atlantic Area surf clam fishery during the last quarter of the 1984 fishing year.

EFFECTIVE DATE: November 9, 1984 until February 7, 1985 unless superseded by subsequent notice setting the 1985 annual specifications.

ADDRESS: Copies of the FMP are available from John C. Bryson, Executive Director, Mid-Atlantic Regional Fishery Management Council, 2112/2115 Federal Building, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde (Acting Surf Clam Management Coordinator), 617-281-3600, ext 273.

SUPPLEMENTARY INFORMATION: This notice of emergency change was prepared by NMFS at the request of the Mid-Atlantic Fishery Management Council. The purpose of this action is to increase the 1984 surf clam quota for the Mid-Atlantic Area from 2,350,000 bushels (48 FR 57303, Dec. 29, 1983) to 2,550,000 bushels. The additional 200,000 bushels will maintain the 1984 surf clam quota within the rule-specified annual range of 1,800,000 to 2,900,000 bushels. This emergency action should lessen the need for a closure during the last quarter of this fishing year.

This action is being implemented using emergency authority provided to the Secretary under section 305(e) of the Magnuson Fishery Conservation and Management Act. At its September 1984 meeting, the Mid-Atlantic Fishery Management Council voted unanimously to increase the mid-Atlantic quota by up to 200,000 bushels.

Harvest of surf clams in the Mid-Atlantic Area has been much greater during this year than in previous years because of significant numbers of surf clams from the strong 1976 and 1977 year classes. Additionally, the recent reduction of the minimum legal size for surf clams, from 5½ inches to 5¼ inches, will elevate the catch per hour fished in the last quarter of the 1984 fishing year.

The total surf clam resource in the Mid-Atlantic Area within the fishery conservation zone has recovered to levels higher than those observed in the mid-1960's. An adequate resource currently exists to support the surf clam fishery for more than ten years, thereby approaching the achievement of Objective No. 1 of the FMP, which states, "Rebuild surf clam populations to allow eventual harvesting approaching the 50 million pound level, which is the present best estimate of the maximum sustainable yield over the range of the resource based on the average yearly catch from 1960–1976." The additional 200,000 bushels will allow harvest of a total of 2,550,000 bushels, 350,000 bushels below the upper limit of the annual range in the FMP.

For the reasons specified above, the Secretary issues this notice of emergency change for a period of 90 days unless superseded by a subsequent notice specifying the 1985 quota.

Classification

The Assistant Administrator, NOAA, has determined that this action is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that, due to the possibility of imminent closure of the fishery and the potential for economic dislocation, the reasons justifying promulgation of this action on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of this emergency action, under the provision of section 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this action does not directly affect the coastal zone of any State with an approved coastal zone management program.

This emergency action is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This action is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that Order.

This action increases the quota within the scope of the optimum yield range set forth in the FMP. As such, the Assistant Administrator has determined that it is categorically excluded from the requirement to prepare an environmental document, as provided by NOAA Directive 02–10.

This action does not contain a collection of information requirement subject to the Paperwork Reduction Act.

This emergency action is exempt from the procedures of the Regulatory Flexibility Act because it is being issued without opportunity for prior public comment.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Fishing.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 84–29903 Filed 11–9–84; 12:12 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 49, No. 222
Thursday, November 15, 1984

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-3]

Proposed Alteration and Revocation of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of several VOR Federal Airways located in the vicinity of Birmingham, AL, by deleting some alternate airway segments and renumbering other airway segments. This action supports our agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate airway designations from the National Airspace System.

DATE: Comments must be received on or before December 31, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWA-3, Federal Aviation Administration, P.O. Box 20636, Atlanta GA 30320.

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 Traffic Rules Branch (ATT-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:.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AWA-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several airways located in the vicinity of Birmingham, AL, by deleting all alternate route designations, renumbering some airway segments and revoking airway segments that are not required. This action supports our agreement with ICAO to eliminate all alternate airway designations from the National Airspace System. This proposal was subdivided into three parts because of the number of actions required in the original request submitted by the Regional Office. [ASD 84-AWA-1 49 FR 33274 and ASD 84-AWA-2 49 FR 36869) Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

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

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal airways.

The Proposed Amendment

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

V-159 [Amended]

By removing the words "Ocala, FL, including a S alternate from INT Vero Beach 319° and Melbourne, FL, 298° radials, to Ocala, via INT Melbourne 298° and Ocala 145° radials; Cross City, FL; Greenville, FL; including an east alternate from Ocala to Greenville via Gainesville, FL, excluding that airspace above 7,000 feet NSL between

Gainesville and Greenville;" and substituting the words "Ocala, FL; Cross City, Fl; Greenville, FL;"

V-537 [New]

From Vero Beach, FL, via INT Vero Beach 319 °T (319) °M) and Melbourne, FL, 298 °T (300 °M) radials; INT Melbourne 298 °T (300 °M) and Ocala, FL 145 °T (145 °M) radials; Ocala; Gainesville, FL; to Greenville, FL.

V-225 [Amended]

By removing the words "Fort Myers, Fl, including an E alternate from Key West, 30 miles, 77 miles 17 AGL to Fort Myers;" and substituting the words "Fort Myers, FL;"

V-539 [New]

From Key West, FL, via INT Key West 013 °T (012 °M) and Fort Myers, FL, 163 °M) radials; to Fort Myers.

V-311 [Revised]

From Wiregrass, GA, via INT Wiregrass 002 °T (360 °M) and La Grange, GA, 191 °T (190 °M) radials; to La Grange. From INT Toccoa, GA, 222 °T (222 °M) and Electric City, SC, 274 °T (274 °M) radials; Electric City, Greenwood, SC; to Columbia, SC.

V-278 [Amended]

By removing the words "Vulcan, AL, including a S alternate from Bigbee to Vulcan via INT Bigbee 082° and Tuscaloosa, AL, 304° radials, and Tuscaloosa, excluding the airspace between the main and this alternate airway." and substituting the words "to Vulcan, AL."

V-245 [Amended]

By removing the words "Bigbee, MS, excluding the airspace at and above 8,000 feet MSL from Jackson to Bigbee." and substituting the words "Bigbee, MS; INT Bigbee 082 °T (078 °M) and Tuscaloosa, AL, 304 °T (301 °M) radials; to Tuscaloosa."

V-325 [Amended]

By removing the words "Muscle Shoals, AL, including an E alternate via INT Gadsden 318° and Decatur, AL, 130° radials, and Decatur." and substituting the words "to Muscle Shoals, AL."

V-541 [New]

From Gadsden, AL, via INT Gadsden 318 °T (316 °M) and Decatur, AL, 130 °T (127 °M) radials; Decatur; to Muscle Shoals, AL.

V-455 [Revised]

From New Orleans, LA, via Picayune, MS; Eaton, MS; to Meridian, MS.

V-114 [Amended]

By removing the words "to New Orleans, LA." under the pending amendment and substituting the words "New Orleans, LA; INT New Orleans 070 °T (064 °M) and Gulfport, MS, 247 °T (245 °M) radials; Gulfport; INT Gulfport 344 °T (342 °M) and Eaton, MS, 171 °T (166 °M) radials; to Eaton."

V-543 [New]

From New Orleans, LA, via INT New Orleans 357 °T (351 °M) and Eaton 221 °T (216 °M) radials; Eaton; INT Eaton 010 °T (005 °M) and Meridian, MS, 221 °T (216 °M) radials; Meridian.

V-54 [Revised]

From Waco, TX, Scurry, TX; Quitman, TX; Texarkana, AR; INT Texarkana 052 °T (045 °M) and Little Rock, AR, 235 °T (230 °M) radials; Little Rock; Holly Springs, MS; Muscle Shoals, AL; Rocket, AL; Chattanooga, TN; Harris, GA; Spartanburg, SC; to Fort Mill, SC.

V-56 [Amended]

By removing the words ", including a south alternate via INT of Augusta 103° and Columbia 236° radials"

V-115 [Amended]

By removing the words ", including a west alternate via INT Chattanooga 028° and Knoxville 243° radials"

V-140 [Amended]

By removing the words "Razorback, AR, including a N alternate via INT Tulsa 059° and Razorback 284° radials;" and substituting the words "Razorback, AR;"

V-185 [Amended]

By removing the words "Knoxville, including an E alternate from Sugarloaf Mountain to Knoxville via INT Sugarloaf Mountain 329° and Knoxville 069° radials." and substituting the words "to Knoxville."

V-241 [Amended]

By removing the words "; including a west alternate from Wiregrass via INT Wiregrass 002° and LaGrange 191° radials, and LaGrange"

(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 11.65)

Issued in Washington, D.C., on November 7, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-29866 Filed 11-14-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AAL-13]

Proposed Establishment of Transition Area; Kipnuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Kipnuk, AK. The intended effect of the proposed action is to provide controlled airspace from 700 feet above the surface for aircraft executing approach and departure procedures, missed approaches, and the prescribed holding procedure.

DATES: Comments must be received on or before December 31, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 84-AAL-13, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

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: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AAL-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with

FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Kipnuk, AK, to provide controlled airspace from 700 feet above the surface for the benefit of aircraft conducting IFR activity. A VOR/DME has been installed at Kipnuk, AK, and is due to be commissioned in January, 1985. Two instrument approach procedures have been developed using these navigation aids. A transition area is needed to provide protected airspace for the approach and departure procedures, missed approaches, and the prescribed holding procedure. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

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

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend §71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Kipnuk, AK [New]

That airspace extending upward from 700 feet above the surface within 9.5 miles southwest and 4.5 miles northeast of the 337° radial from the Kipnuk VOR (lat. 59°56'36.95" N., long. 164°01'55.48" W.), extending from the VOR to 18.5 miles northwest of the VOR; and within 9.5 miles northeast and 4.5 miles southwest of the 154° radial and 337° radial from the Kipnuk VOR, extending from 1 mile north of the VOR to 18.5 miles southeast of the VOR.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C. on November 7, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84–29889 Filed 11–14–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 71 and 73

[Airspace Docket No. 84–ANM–19]

Proposed Establishment of Restricted Area; Guernsey, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a new Restricted area R–7001C directly above existing Restricted Areas R–70001A and R–7001B, to extend vertically from 23,500 feet MSL to 30,000 feet MSL. This proposal would accommodate the high angle fire of various weapons and permit maximum firing capability of the weapons. The proposed Restricted Area R–7001C would be used only when required which is approximately 25 percent of the total time Restricted Area R–7001B is used.

DATES: Comments must be received on or before December 31, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 84–ANM–19, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

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: Burton Chandler, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic

Service, Federal Aviation Administation, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–ANM–19." the postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.151 of Part 71 and § 73.70 of Part 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish new Restricted Area R–7001C Guernsey, WY. R–7001C will also be added to the Continental Control Area. The Wyoming Army National Guard has requested an increase of airspace to 30,000 feet MSL to accommodate the high angle fire of M110 8" Self Propelled Artillery Howitzers, with extended range modification. The maximum ordinate of the weapon is approximately 23,000 feet above ground level (AGL). The ceiling of existing Restricted Area R–7001B is 23,500 feet MSL. In order to achieve maximum firing capability of the weapon within existing Restricted Area R–7001B (ground elevation 5,000 feet MSL), and provide a 2,000 foot safety buffer zone, it will be necessary to restrict airspace to 30,000 feet MSL. The proposal also would correct § 71.151 by deleting R–7001 and adding R–7001B to the Continental Control Area. These actions were inadvertently omitted from a prior amendment (44 FR 34114). Section 71.151 of Part 71 and section 73.70 of Part 73 of the Federal Aviation Regulations were republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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, when promulgated, 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 Parts 71 and 73

Continental control area and restricted areas, aviation safety.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.151 of Part 71 and § 73.70 of Part 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

71.151

R–7001 Guernsey, WY [Revoked]
R–7001B Guernsey, WY [New]
R–7001C Guernsey, WY [New]

73.70

R–7001C Guernsey, WY [New]

Boundaries. Beginning at lat. 42°27'30" N., long. 104°52'30" W.; to lat. 42°27'30" N., long. 104°42'30" W.; to lat. 42°22'30" N., long. 104°42'30" W.; to lat. 42°20'30" N., long. 104°52'30" W.; to the point of beginning.
Designated altitudes. 23,500 feet MSL to 30,000 feet MSL.
Time of designation. Intermittent, 24 hours in advance by NOTAM.
Controlling agency. FAA, Denver ARTCC
Using agency. Adjutant general, State of Wyoming

(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 11.65)

Issued in Washington, D.C., on November 7, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84–29868 Filed 11–14–84; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 71 and 73

[Airspace Docket No. 84–ASO–22]

Proposed Alteration of Restricted Area, Fort Campbell, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Restricted Areas R–3701 A and B and R–3702 A and B, to establish R–3702C, and to revoke R–3701C and R–3703 A, B and C located in the vicinity of Fort Campbell, KY. After reviewing their overall training and operational requirements, the Department of the Army has made a decision to reduce the size of the special use airspace. This action would return airspace to the National Airspace System (NAS).

DATE: Comments must be received on or before December 31, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 84–ASO–22, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

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 (ATO–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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84–ASO–22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.151 of Part 71 and § 73.37 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter the descriptions of Restricted Areas R–3701A and B and R–37002A and B, to establish R–3702C, and to revoke Restricted Areas R–3701C and R–3703A, B and C. The Department of the Army has performed a self-analysis of its overall training missions and operational requirements with respect to special use airspace. As a result, the Department of the Army has implemented several procedural changes which require less airspace. The airspace no longer required by the Army is being returned to the NAS for public use. This action reduces the burned on the public by returning airspace for public use. Section 71.151 of Part 71 and § 73.37 of Part 73 of the Federal Aviation Regulations were republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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, when promulgated, 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 Parts 71 and 73

Aviation Safety Continental control area and restricted areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.151 of Part 71 and § 73.37 of Part 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

§ 71.151

R–3701C Fort Campbell, KY [Revoked]
R–3703C Fort Campbell, KY [Revoked]

§ 73.37

R–3701A Fort Campbell, KY [Amended]

Boundaries. Beginning at lat. 36°39'01" N., long. 87°34'15" W.; to lat. 36°39'01" N., long. 87°32'27" W.; to lat. 36°39'05" N., long. 87°31'18" W.; to lat. 36°39'20" N., long. 87°30'35" W.; to lat. 36°39'06" N., long. 87°28'57" W.; to lat. 36°39'18" N., long. 87°28'41" W.; to lat. 36°37'54" N., long. 87°28'38" W.; to lat. 36°37'09" N., long. 87°28'57" W.; to lat. 36°37'18" N., long. 87°32'05" W.; to lat. 36°37'22" N., long. 87°34'15" W.; to the point of beginning.

R–3701B Fort Campbell, KY [Amended]

Boundaries. Beginning at lat. 36°39'01" N., long. 87°34'15" W., to lat. 36°39'01" N., long. 87°32'27" W.; to lat. 36°39'05" N., long. 87°31'18" W.; to lat. 36°39'20" N., long. 87°30'35" W.; to lat. 36°39'06" N., long. 87°28'57" W.; to lat. 36°39'18" N., long. 87°28'41" W.; to lat. 36°37'54" N., long. 87°28'38" W.; to lat. 36°37'09" N., long. 87°28'57" W.; to lat. 36°37'18" N., long. 87°32'05" W.; to lat. 36°37'22" N., long. 87°34'15" W.; to the point of beginning.

R–3701C Fort Campbell, KY [Revoked]

R–3702A Fort Campbell, KY [Amended]

Boundaries. Beginning at lat. 36°32'00" N., long. 87°32'30" W.; to lat. 36°37'18" N., long. 87°32'05" W.; to lat. 36°37'22" N., long. 87°34'15" W.; to lat. 36°39'01" N., long. 87°34'15" W.; to lat. 36°39'00" N., long. 87°40'00" W.; to lat. 36°42'00" N., long. 87°40'30" W.; to lat. 36°43'30" N., long. 87°43'00" W.; to lat. 36°43'30" N., long. 87°48'15" W.; to lat. 36°37'30" N., long. 87°48'15" W.; to lat. 36°35'30" N., long. 87°45'00" W.; to lat. 36°33'30" N., long. 87°42'30" W.; to lat. 36°32'00" N., long. 87°35'00" W.; to the point of beginning.

Designated altitudes. Surface to and including 16,000 feet MSL.

R–3702B Fort Campbell, KY [Amended]

Boundaries. Beginning at lat. 36°32'00" N., long. 87°32'30" W.; to lat. 36°37'18" N., long. 87°32'05" W.; to lat. 36°37'22" N., long. 87°34'15" W.; to lat. 36°39'01" N., long. 87°34'15" W.; to lat. 36°39'00" N., long. 87°40'00" W.; to lat. 36°42'00" N., long. 87°40'30" W.; to lat. 36°43'30" N., long. 87°43'00" W.; to lat. 36°43'30" N., long. 87°48'15" W.; to lat. 36°37'30" N., long. 87°48'15" W.; to lat. 36°35'30" N., long. 87°45'00" W.; to lat. 36°33'30" N., long. 87°42'30" W.; to lat. 36°32'00" N., long. 87°35'00" W.; to the point of beginning.

Designated altitudes. 16,000 feet MSL to and including FL 220.

R–3702C Fort Campbell, KY [New]

Boundaries. Beginning at lat. 36°32'00" N., long. 87°32'30" W.; to lat. 36°37'18" N., long. 87°32'05" W.; to lat. 36°37'22" N., long. 87°32'15" W.; to lat. 36°39'01" N., long. 87°34'15" W.; to lat. 36°39'00" N., long. 87°40'00" W.; to lat. 36°42'00" N., long. 87°40'30" W.; to lat. 36°43'30" N., long. 87°43'00" W.; to lat. 36°43'30" N., long. 87°48'15" W.; to lat. 36°37'30" N., long. 87°48'15" W.; to lat. 36°35'30" N., long. 87°45'00" W.; to lat. 36°33'30" N., long. 87°42'30" W.; to lat. 36°32'00" N., long. 87°35'00" W.; to the point of beginning.

Designated altitudes. FL 220 to FL 270.

Time of designation. By NOTAM 24 hours in advance.

Controlling agency. FAA, Memphis ARTCC.

Using agency. Commanding General, Fort Campbell, KY.

R-3703A Fort Campbell, KY [Revoked]

R-3703B Fort Campbell, KY [Revoked]

R-3703C Fort Campbell, KY [Revoked]

(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 11.651)

Issued in Washington, D.C., on November 7, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-29865 Filed 11-14-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 84-AWA-24]

Proposed Alteration of Jet Route and VOR Federal Airways; Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign one jet route and five VOR federal airways, and to cancel one VOR federal airway. These airspace actions arise from the scheduled decommissioning of the Lewis, IN, very high frequency omnidirectional radio range and ultra high frequency tactical air navigation aid (VORTAC) in early 1985. At that time, the affected jet route and federal airways will be realigned using the upgraded Terre Haute, IN, VORTAC. These actions are proposed to help increase the utility and efficiency in the use of navigational aids (NAVAID) by users of the National Airspace System (NAS).

DATES: Comments must be received on or before December 31, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWA-24, 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: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION: .

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AWA-24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Part 71 and 75) to realign Jet Route J-73; realign Federal Airways V-7, V-12, V-171, V-221, V-243; and cancel Federal Airway V-514. The realignment is proposed due to the scheduled decommissioning of the Lewis, IN, VORTAC in early 1985. The functions of the decommissioned Lewis VORTAC will be transferred to an upgraded Terre Haute, IN, VORTAC which lies a short distance to the north of Lewis, IN. The proposed actions will promote utility and efficiency in the use of NAVAIDS by users of the NAS. The actions are also consistent with FAA plans and objectives of obtaining maximum productivity and economy of the NAS ground-to-air subsystems. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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, when promulgated, will not have a significant economic impact on a substantial number of small entities under this criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

VOR Federal airways and jet routes, Aviation safety.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend §§ 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

§ 71.123

V-7 [Amended]

By removing the words "INT Pocket City 015° and Lewis, IN, 198° radials, Lewis;"

V-12 [Amended]

By removing the words "Lewis, IN;"

V-171 [Amended]

By removing the word "Lewis," and substituting the words "Terre Haute,"

V-221 [Amended]

By removing the words "via INT Bible Grove 087° and Bloomington, IN, 253° radials; Bloomington;" and substituting the words "via Bloomington, IN;"

V-243 [Amended]

By removing the words "Lewis, IN." and substituting the words "Terre Haute, IN."
V–514 [Revoked]

§ 75.100

J–73 [Amended]
By removing the words "Lewis, IN;"

(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 11.65)

Issued in Washington, D.C., on November 7, 1984.

John W. Baier

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84–29887 Filed 11–14–84; 8:45 am]
BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release Nos. 33–6556; IC–14230; File No. S7–34–84]

Expense-Related Disclosure Requirements; Form Revision

AGENCY: Securities and Exchange Commission.

ACTION: Proposed form revision.

SUMMARY: The Commission is publishing for comment proposed revisions to the expense-related disclosure requirements of Form N–1A, the registration form used by open-end management investment companies under the Investment Company Act of 1940 and the Securities Act of 1933. The proposed revisions would consolidate all expense-related information contained in the prospectus and add a tabular presentation of the major expense data. The Commission is proposing these revisions in order to improve the quality of disclosure made to investors in mutual fund prospectuses.

DATE: Comments must be received on or before January 14, 1985.

ADDRESS: Comments should be submitted in triplicate to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments letter should refer to File No. S7–34–84. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Mary Margaret W. Hammond, Special Counsel (202) 272–3045, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is publishing for comment proposed revisions to Item 5, Management of the Fund, of form N–1A, (17 CFR 239.15A, 274.11A), the registration form under the Securities Act of 1933 (15 U.S.C. 177a et seq.) (The "1933 Act") and the Investment Company Act of 1940 (15 U.S.C. 80a et seq.) ("the 1940 Act") used by open-end management investment companies other than registered separate accounts of insurance companies. The revised Item 5 would require a consolidation of all narrative information in the prospectus concerning significant expenses of the registrant and add a tabular presentation setting forth the major types of expenses, the names of the payees, and the amount of the expense, expressed as a percentage of average net assets.

Background

The Commission believes revisions in the disclosure requirements of Form N–1A as they relate to the expenses of mutual funds are needed because of changing patterns in the ways mutual funds distribute their shares and pay distribution expenses. In recent years mutual fund advisory, distribution and shareholder servicing arrangements have become more varied and more complex. Funds shares are sold today with a large variety of sales load and distribution fee arrangements. The number of no load and low load funds, relative to load funds, has increased. Some funds have adopted the use of "contingent deferred" sales loads, where the sales charge is paid at the time an investor redeems his shares. Many funds have adopted distribution plans under Rule 12b–1 of the 1940 Act (17 CFR 270.12b–1) which permits mutual funds to spend funds assets to cover expenses related to selling fund shares. A fund may pay distribution expenses under a Rule 12b–1 plan regardless of whether the fund is sold with or without a sales load. In addition, shares of money market and other mutual funds now are available to investors through banks and other financial institutions which receive fees for performing shareholder servicing functions. The complexity and variety of these distribution and service arrangements are sufficiently great that the Commission wishes to explore ways to improve the quality of prospectus disclosure so that investors may more easily and more clearly understand mutual fund fee and expense arrangements.

Discussion

Until the 1970's the traditional means by which most mutual fund shares were sold was through sales by securities dealers who received a "sales load" or sales charge paid by the investor. The sales load compensated the selling dealers and their salesmen and, in essence, funded the distribution system for the typical mutual fund. The comparatively rare no-load fund generally did not have the large dealer distribution systems characteristic of load funds, but relied instead on the fund's adviser to stimulate investor interest in the fund, in part, through newspaper advertisements and other sales literature paid for by the adviser.

Since the 1970's this comparatively simple pattern of distribution has changed significantly. The dramatic growth in the 1970's of money market funds, which are no-load funds, made investors more sensitive to load charges and likely contributed to the growth of other types of no-load and low-load mutual funds in the late 1970's. The increase in no-load funds stimulated debate over the permissible use of fund assets for distribution and in 1980, following an extensive rulemaking proceeding, the Commission adopted Rule 12b–1 to permit funds to use their assets directly or indirectly to pay expenses under certain circumstances.[1]

Initially Rule 12b–1 plans were adopted primarily by no-load funds and used to pay advertising and other promotional expenses. More recently, however, funds have adopted distribution plans under Rule 12b–1 whose operations are characteristic of the traditional load fund sales approach. That is, these fund plans provide for payments to broker-dealers of a percentage of the investor's purchase as compensation for selling fund shares. Because selling through a traditional dealer network typically is more costly than the promotional techniques used previously by no-load funds, the level of Rule 12b–1 payments has increased. Also, low-load funds and funds with contingent deferred sales loads may use Rule 12b–1 plans for certain distribution expenses.

Finally, an increasing number of banks and other financial institutions are making shares of various types of mutual funds available to their customers and receiving fees for services rendered to these new mutual fund shareholders. Previously, some banks had established so-called "sweep accounts" where the bank would sweep

[1] Securities Act Release No. 6254 (October 28, 1980) (45 FR 73898 (November 7, 1980)).

into a money market mutual fund available cash held in the customer's account. Although the introduction of bank money market deposit accounts diminished interest in these "sweep" arrangements, today some banks are making available to their customers the opportunity to buy share of other types of mutual funds and unit investment trusts under agreements between the bank and the mutual fund or its sponsor. Frequently the bank will agree to perform services such as establishing and maintaining accounts, processing purchase and redemption orders, sub-accounting and answering shareholder inquiries. For these services, the bank receives fees from the fund pursuant to either a Rule 12b–1 plan or an administrative services plan. The bank may also receive additional fees from its customers.

As indicated above, mutual funds today are using a variety of distribution techniques and fee arrangements. Given the variety and complexity of these arrangements, the Commission has reexamined the existing disclosure requirements. The Commission is proposing revisions to its rules so that required disclosure will be presented in the prospectus in a manner which makes it more easily understood and, therefore, more meaningful to investors.

Proposed Revisions to Item 5

At present, Items 5 and 7 of Form N–IA require expense-related discussions which may be set forth anywhere in the prospectus. Pursuant to Item 5 (b) and (c), the registrant must disclose information concerning the identity, services provided, and compensation paid to its investment adviser and administrator. Paragraph (d) requires the identification of the registrant's transfer agent and dividend paying agent. A statement as to total expenses must be set forth pursuant to paragraph (e). Paragraph (f) requires disclosure of any arrangements with affiliated brokers. In addition, Item 7(e) requires disclosure of distribution expenses paid pursuant to Rule 12b–1 plans. The registrant is given the option of dispersing these required disclosures throughout the prospectus, and most registrants do.

The Commission's proposal would bring these required disclosures together. Proposed paragraph (c) of Item 5 would require a discussion of all significant expenses of the registrant, as well as expenses paid pursuant to Rule 12b–1, in addition to the investment advisory expense required to be disclosed pursuant to paragraph (b).

Following this narrative description of the registrant's expenses, the Commission would require, pursuant to proposed paragraph (d), a tabular presentation of the major expense items. This table, when combined with the more detailed narrative description of expenses, should make clear the registrant's existing expense and fee arrangements. Because the Commission believes that combining the table with the narrative will give investors a complete and understandable picture of the various fee arrangements, it is proposing a general instruction to Item 5 requiring that all the Item 5 information be set forth together in one location of the registrant's choice in the prospectus.

The Commission believes that the changes proposed today would improve significantly the quality of prospectus disclosure without adding appreciably to the cost of burden of the disclosure. In order to further minimize the burden, if the amendments to the form are adopted, existing registrants would be required to make the necessary changes only when they file their annual updates by post-effective amendment. These post-effective amendments could become effective without saff review pursuant to Rule 485(b) (17 CFR 230.485(b)).

List of Subjects

17 CFR Part 239

Reporting and Recordkeeping Requirements, Securities.

17 CFR Part 274

Investment Companies, Reporting and Recordkeeping Requirements, Securities.

Text of Proposed Form Changes

PARTS 239 AND 274—[AMENDED]

The Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations by revising Form N–1A as set forth below:

Section 239.15A Form N–1A, registration statement of open-end management investment companies. [Form N–1A amended]

Section 274.11A Form N–1A, registration statement of open-end management investment companies. [Form N–1A amended]

1. By proposing to completely revise paragraphs (c) and (d) of Item 5 as follows:

ITEM 5. *Management of the Fund*

* * * * *

(c) a brief description of the registrant's expenses, other than investment advisory expenses discussed pursuant to paragraph (b) above.

Instruction to paragraph (c):

This description must include a discussion of all other significant expenses as well as those expenses paid pursuant to Rule 12b–1, identifying the services provided or to be provided, the persons providing the services, the basis on which payments are or will be made, and the amount of the expense, expressed as a percentage of net assets. Examples of types of expenses that might be discussed include: administrative or business affairs management services, transfer agent, and dividend paying agent fees. Significant administrative or business affairs management services include those services provided by banks or other persons performing shareholder servicing. Regardless of whether fees paid to transfer agents dividend paying agents are deemed significant, provide the name and principal business address of each.

(d) Furnish the following information in the tabular format illustrated below:

EXPENSES PAID BY THE REGISTRANT

Type of expense	Name of payee	Percent of average net assets
1. Investment Advisory Fees	Name	%
2. Distribution Expenses	Name	%
3. Shareholder Servicing Expenses	Name	%
4. Other Expenses	Leave blank	%
5. Total Expenses	Leave blank	%

Instructions to paragraph (d):

1. For purposes of paragraph (d),

(a) "investment advisory fees" means fees paid to each investment adviser of the registrant, including sub-advisers;

(b) "distributing expenses" means all fees or expenses paid pursuant to plans adopted under Rule 12b–1 of the Investment Company Act of 1940 (if these fees are paid as part of the investment adviser's fee, the advisory and distribution fees may be combined as a single line item captioned "Investment Advisory and Distribution Expenses");

(c) "shareholder servicing expenses" means expenses for administrative services such as shareholder servicing, transferring record ownership, sub-accounting, processing purchase and redemption transactions, answering inquiries and mailing shareholder communications, but does not include expenses paid pursuant to the registrant's investment advisory contract; (If any shareholder servicing expenses are paid pursuant to a Rule

12b–1 plan, they may be included in this line item with a footnote to the table indicating that they are paid pursuant to a Rule 12b–1 plan but are not included as a distribution expense in the table.)

(d) "other expenses" means all expenses paid by the registrant and not included in investment advisory, distribution, or shareholder servicing expenses.

2. If more than three payees are involved with respect to any fee or expense, set forth a generic description of the payees, such as "broker-dealers", "banks", or "financial institutions." The amount of the fees received by these payees should be set forth as an aggregate figure.

3. The percentage of average net assets should be set forth for the most current period shown in the per share table provided in response to Item 3(a). If the registrant is not required to provide a per share table pursuant to Item 3(a), briefly describe the basis on which payments will be made and delete the "other expenses" and "total expenses" lines of the table, but include a brief statement concerning other fees or expenses which the registrant expects to pay.

If the registrant does not have a Rule 12b–1 plan, briefly state in the table in response to the distribution expense item the primary method or methods used to pay distribution expenses, e.g., "paid by adviser", "paid through sales charges." Regardless of whether or not the registrant has a Rule 12b–1 plan, if there are sales charges or contingent deferred sales charges, provide cross references to where information concerning these charges may be found in the prospectus.

If someone other than the registrant pays for shareholder servicing, briefly state in the table the primary method used to pay these expenses.

If the registrant knows that the historical expense information is not indicative of future expenses, a footnote should describe the matters that would cause the reported fee information not to be necessarily indicative of future fees.

General Instruction to Item 5: All information required by Item 5 must be consolidated in one location in the prospectus.

2. By proposing to delete existing paragraph (e) of Item 5 and renumbering paragraph (f) so that it becomes paragraph (e) of Item 5.

3. By proposing to delete existing paragraph (e) from Item 7.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that the form amendments proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Paperwork Reduction Act

The information collection required by these proposed revisions to Form N–1A has been submitted to the Office of Management and Budget.

Statutory Authority

The Commission hereby publishes for comment proposed amendments to Form N–1A under the Securities Act of 1933, pursuant to the provisions of Sections 7, 10 and 19 of the Securities Act of 1933 (15 U.S.C. 77g, 77j and 77s).

By the Commission.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Form N–1A under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], to consolidate narrative information in mutual fund prospectuses concerning significant expenses and add a table of major expense items, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendments would not have a significant economic impact on any registrant and, accordingly, would not have a significant economic impact on a substantial number of small entities. This is because the information required by the amendment already appears in the prospectus, or is readily available, and requiring its consolidation and presentation in a table will not impose a significant burden on any registant.

Dated: November 8, 1984.

John S.R. Shad,

Chairman.

[FR Doc. 84–30010 Filed 11–14–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79–76–236 (Texas—9 Addition VI)]

High-Cost Gas Produced From Tight Formations; Texas

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that an additional area of the Travis Peak Formation in Nacogdoches and Rusk Counties, Texas, be designated as a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on December 24, 1984. *Public hearing:* No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 23, 1984.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NW., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson, (202) 357–8556.

I. Background

On September 28, 1984, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that an additional area of the Travis Peak Formation located in Nacogdoches and Rusk Counties, Texas be designated as a tight formation.[1]

[1] The Commission previously adopted recommendations that portions of the Travis Peak Formation in the Sym-Jac, West (Hosston) Filed (Order No. 154 issue June 10, 1981, in Docket No. RM79–76 (Texas—9)), the Bear Grass Area of east Texas (Order No. 180 issued October 8, 1981, in Docket No. RM79–76 (Texas—9 Addition)), the Melrose, South (Travis Peak) Field (Order No. 384 issued June 26, 1984, in Docket No. RM79–171 (Texas—9 Addition III)) and the Martinsville (Travis Peak) Field (Order No. 330 issued September 27, 1983, in Docket No. RM79–190 (Texas—9 Addition IV) be designated as tight formations There are currently under consideration the following recommendations that additional areas of the Travis Peak Formation be designated as tight

Continued

Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that an additional area of the Travis Peak be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas' recommended addition to the Travis Peak Foundation is located in the eastern portion of the state, specifically northeastern Nacogdoches County, Texas. The well in which production from the Travis Peak Formation has been tested is the E.J. Edwards, et al, No. 1, located approximately one mile southwest of the town of Garrison, Texas, Francis Kellett Survey, Abstract 329. Production is from perforations 9,285' to 9,577' in the newly designated Toolan (Travis Peak) Field. Approval for tight formation designation for the Travis Peak is being requested for an area covering a 2.5 mile radius around the aforementioned well as will encompass all or part of the surveys located in the Toolan Field.

The Travis Peak Formation in this area consists of a series of silty to very fine grained sands, interbedded with shales deposited in shallow marine nearshore environment during the Cretaceous era. It is extremely difficult to correlate most of the sands from one well location to another. Also, due to the high quantity of silt deposited with the sands, there is little relationship between porosity and permeability of the sands. These Travis Peak sands are found in the interval ± 7,100 feet subsea to ± 9,200 feet subsea, or from the base of the Pettit to the top of the Cotton Valley intervals.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing on February 23, 1983, convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing state and federal regulations assure that development of the formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, under the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stats. and Regs. § 30.180 (1980), the Director gives notice of the proposal submitted by Texas that the Travis Peak Formation as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 24, 1984. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–236 (Texas—9 Addition VI), and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any persons wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than November 23, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will be amended as set forth below, in the event the Commission adopts Texas' recommendation.

Kenneth A. Williams,

Director; Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding a new paragraph (d)(36)(vi) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(36) *Travis Peak Formation in Texas. RM79–76 (Texas—9)* * * *

(vi) *Toolan (Travis Peak) Field*—(A) *Delineation of formation.* The designated portion of the Travis Peak Formation consists of all or part of the surveys located in the Toolan Field, in portions of Nacogdoches and Rusk Counties, Texas, specifically the area encompassed by a 2.5 mile radius around Hill International Production Company's E. J. Edwards, et al, No. 1 well, located approximately one mile southwest of the town of Garrison, Texas, Francis Kellett Survey, Abstract 329.

(B) *Depth.* These Travis Peak sands are found in the interval ± 7,110 feet subsea to ± 9,200 feet subsea, or from the base of the Pettit to the top of the Cotton Valley intervals.

[FR Doc. 84–29927 Filed 11–14–84; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 271

[Docket No. RM79–76–238 (Texas—22 Addition V)]

High-Cost Gas Produced From Tight Formations; Texas

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or

formations: all of Texas Railroad Commission Districts 5 and 6 Docket No. RM79–76 (Texas—9 Addition II) and the Pinehill, S.E. (Travis Peak) Field in Docket No. Rm79–76–196 (Texas—9 Addition V). Notices of Proposed Rulemaking issued December 15, 1981, and May 27, 1983, respectively.

costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that the Strawn-Detrital Formation be designated as a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on December 24, 1984. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 23, 1984.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson, (202) 357–8556.

I. Background

On October 9, 1984, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that additional areas of the Strawn-Detrital Formation in the University Block 31 (Strawn-Detrital Field in Crockett County, Texas, be designated as a tight formation.[1] Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the additional areas of the Strawn-Detrital Formation be added to the previously designated tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

[1] On August 24, 1982, the Commission issued Order No. 249 in Docket No. RM79–76–111 (Texas—22), on April 21, 1983, the Commission issued Order No. 295 in Docket Nos. RM79–76–150 (Texas—22 Addition) and RM79–76–157 (Texas 22 Addition II), and on July 12, 1983, the Commission issued Order No. 314 in Docket No. RM79–76–169 (Texas—22 Addition III) in which the Commission designated, as tight formations, portions of the Strawn-Detrital Formation in the University Block 31 (Strawn-Detrital) Field and Howards Creek (Penn) Field and portions of the Detrital Formation in the Perner Ranch area. Additionally, on September 27, 1983, the Commission issued Order No. 331 in Docket No. RM79–76–195 in which the Commission designated as a tight formation portions of the Strawn-Detrital Formation in the Ozona, SW. (Strawn) Field.

II. Description of Recommendation

Texas recommends that the Strawn-Detrital Formation in additional portions of the University Block 31 (Strawn-Detrital) Field in Crockett County, Railroad Commission District 7C, be designated as a tight formation. The recommended area consists of approximately 7,300 acres, located approximately 10 miles southwest of Ozona, Texas, and immediately to the south of the areas of the Strawn-Detrital Formation in the University Block 31 Field designated by the Commission as tight formations by Order Nos. 295 and 314. Specifically, the recommended area consists of Sections 20, 21, 22, 29, 37, 38, the western 75 acres of Section 34, the western half of Section 36 and the eastern half of Section 41, Block ST, T.C. RR Survey; Section 28, Block ST, H.E. & W.T. Survey; Section 8 and the northern 480 acres of Section 7 and 10, Block SL, T & S.T.L. Survey; and the northern 98 acres of Block Z, J.W. Henderson Survey.

The vertical extent of the Strawn-Detrital Formation in Texas' recommendation is defined as the interval from the base of the Canyon Formation (top of Strawn series) to the top of the Simpson Shale (base of the Devonian), which includes the Strawn, Strawn-Detrital and Devonian zones. In the recommended area the average depth to the top of the Strawn series is approximately 8,900 feet.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing in support of this recommendation demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing state and federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, [Reg. Preambles 1977–1981] FERC Stats. and Regs. ¶ 30,180 (1980), notice is hereby given of the proposal submitted by Texas that the additional area of the Strawn-Detrital Formation, as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 24, 1984. Each person submiting a comment should indicate that the comment is being submitted in Docket No. RM79–76–238 (Texas—22 Addition V) and shluld give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than November 23, 1984.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

PART 271—[AMENDED]

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will be amended as set forth below, in the event the Commission adopts Texas' recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by revising paragraph (d)(106)(i) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(106) *Strawn-Detrital Formation in Texas. RM79–76 (Texas—22)*

(i) *University Block 31 (Strawn-Detrital) and Howards Creek (Penn) Fields. (A) Delineation of formation.* The Strawn-Detrital Formation in the area of the University Block 31 and Howards Creek Fields is located in Crockett County, Texas, Railroad Commission District 7C. The designated area consists of Sections 7, 8, 9, the south half of Section 10, Section 16 through 20, the south half of Section 21, Section 29 through 32, Block 30, University Lands Survey; all Sections in Block 31, University Lands Survey; Sections 1, 2, 3, the south half of Section 4, Sections 5 through 8, the south half of Section 9, Sections 11 through 14 and the north half of Section 18, Block 32, University Lands Survey; Sections 6 through 20, Block 33, University Lands Survey; the southwest ¼ of Section 12, Sections 29, 30, 31, the south half of Section 32, Sections 50, 51 and the southeast ¼ of Section 53, Block UV, GC & SF RR Co. Survey; Section 2, Block ST–2, GC & SF RR Co. Survey; the north half of Hampton Survey; Section 1001 of W. G. Hall Survey; Section 1002 of J.M. Jean Survey; Section 1003 of M.F. Lopez Survey; Sections 1, 2, 14 through 18, Block St, GC & SF RR Co. Survey; the north half of Section 49, Sections 50 through 53, the south half of Section 54, Sections 66 through 70, the east half of Section 71, Sections 76 through 79, the south half of Section 90, Sections 91, 92, 93 and the north half of Section 94, Block OP, GC & SF RR Co. Survey; Sections 20, 21, 22, 29, 37, 38, the western 75 acres of section 34, the western half of Section 36 and the eastern half of Section 41, Block ST, T.C.R.R. Survey; Section 28, Block ST, H.E. & W.T. Survey; Section 8 and the northern 480 acres of Sections 7 and 10, Block SL, T. & S.T.L. Survey; and the northern 98 acres of Block Z, J.W. Henderson Survey.

(B) *Depth.* The vertical extent of the Strawn-Detrital Formation in the University Block 31 Field is defined as the interval from the base of the Canyon Formation (top of the Strawn series) to the top of the Simpson Shale (base of the Devonian), which includes the Strawn, Strawn-Detrital and Devonian zones. The average depth to the top of the Strawn series is approximately 7,900 feet in the north and 8,900 feet in the south.

[FR Doc. 84–29928 Filed 11–14–84; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 291

Occupancy and Use of Sites and Areas of Concentrated Public Use

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture proposes regulations to recover Federal costs associated with administration of user reservation systems on some National Forest System recreation areas. This action is necessary to continue protection of resources and protection of high quality recreation experience.

DATE: Comments must be received by January 14, 1985.

ADDRESS: Comments should be sent to: R. Max Peterson, Chief (2350), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lennon, Recreation Management, telephone (202) 447–2311.

SUPPLEMENTARY INFORMATION: Some National Forest System recreation areas, such as Wilderness Areas and Wild and Scenic Rivers, are highly popular and have reached their recreation use capacity. In such cases, the Forest Service has instituted reservation or permit systems to protect the resources, to provide prospective recreationists with the assurance that they will be able to use an area during a given period, and to maintain the opportunity for visitors to have a high quality recreation experience.

Forest Service costs for administration of reservation systems have risen sharply over the last several years. In one case, the costs on a Wild and Scenic River are $35,000 to $40,000 a year.

Because issuance of a reservation is a special service which primarily benefits the user, the Agency is proposing to revise its regulations to permit recovery of Federal costs associated with this service.

Examples of conditions which may warrant limitations of use and the collection of reservation fees are those where substantial numbers of people are using an area, the recreation use capacity of the area is being reached, or the costs of the permit reservation system are significant.

Under the proposed rule, fee levels will be based upon anticipated costs. Precise cost information for potential areas is not available at this time, but experience on a few sites would indicate a fee range of $2.00 to $8.00. Fees would be nonrefundable. Areas subject to a fee would be posted.

The rule on reservation fees would be coded as a new section 291.10.

This proposed rule has been reviewed under proposed USDA procedures and Executive Order 12291, and it has been determined that the regulation is not a major rule. It will result in an insignificant increase in costs to individual users of the recreation areas while permitting the Government to recoup administrative expenses. Because the regulation applies to individual recreation users in a limited situation, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

The Assistant Secretary of Agriculture for Natural Resources and the Environment has determined this action will not have a significant economic impact on a substantial number of small entities. The action involves a recovery cost for providing benefits to private individuals and will not affect small entities.

This rule is determined to be limited in context and intensity and to produce little or no environmental effects, individually or cumulatively, to either the biological or physical component of the human environment. Therefore, it is unnecessary to prepare an environmental assessment or an environmental impact statement.

Lists of Subjects in 36 CFR Part 291

Recreation and recreation area.

PART 291—[AMENDED]

Therefore, for the reasons set forth above, Part 291 of Chapter II of Title 36 of the Code of Federal Regulations is proposed to be amended as follows:

1. Revise the authority citation to read as follows:

Authority: 30 Stat. 35, as amended (16 U.S.C. 551); Sec. 1, 33 Stat. 628 (16 U.S.C. 472); Sec. 4(b,c) Pub.L. 92–347, 86 Stat. 460 (16 U.S.C. 460 *l*-6a(b,c)); Sec. 10(d), Pub.L. 90–542, 82 Stat. 916 (16 U.S.C. 1281(d)); Sec. 7(i), Pub.L. 90–543, 82 Stat. 925, as amended (16 U.S.C. 1246(i)); Sec. 4(b), Pub.L. 88–577, 78 Stat. 893 (16 U.S.C. 1133(b)); Sec. 4(a), Pub.L. 95–495, 92 Stat. 1650.

2. Add a new § 291.10 to read as follows:

§ 291.10 Reservation fees.

(a) The Forest Service may charge fees to recover expenses incurred in providing reservation and other special services for the public use of recreation areas where limitations on use are deemed necessary or desirable to achieve the management purposes of an area of the National Forest System. The Chief of the Forest Service or his delegate shall establish the amount of such fees.

(b) Forest Service officials shall prominently post clear notice that a reservation fee has been established at each area and at appropriate locations therein. Publications distributed at such areas shall also include such notice.

Dated: September 25, 1984.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 84-29954 Filed 11-14-84; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2718-6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In 1983 EPA disapproved Indiana's most recently submitted opacity regulation, 325 IAC 5-1 (hereinafter referred to as 1980 APC 3), on the grounds that it would relax the limits established by the existing regulation, known as SIP APC 3. On August 22, 1984, the United States Court of Appeals for the Seventh Circuit held SIP APC 3 invalid as applied to non-combustion sources. *Bethlehem Steel Corporation* v. *Gorsuch*, No. 82-2884. After reevaluating its prior disapproval of 1980 APC 3 in light of that decision, EPA now proposes to rescind the disapproval and approve 1980 APC 3.

DATE: Comments on this proposed rulemaking must be submitted by December 17, 1984.

ADDRESSES: Copies of this approved SIP revision and the file on EPA's previous actions on 325 IAC 5-1 are available at the following addresses for review. (It is recommended that you telephone Robert B. Miller, at (312) 886-6031, before visiting the Region V office).

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

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Duplicate copies of the comments should be sent to: John Topping, Office of Air and Radiation, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Kendra Heymann, Office of General Counsel, Air and Radiation Division (LE-132A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. (202) 382-7730.

or

Robert B. Miller, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION:

I. Introduction

This Notice of Proposed Rulemaking concerns the opacity limits applicable to sources of particulate air pollution in the State of Indiana. Those limits have proved to be a source of controversy for many years between EPA and both the State of Indiana and its industries. On December 16, 1983 (48 FR 55852), EPA disapproved the most recent Indiana opacity regulation submitted for review, known as 1980 APC 3, principally on the grounds that it would relax the standard set by the existing regulation, known as SIP APC 3, and the State had failed to show that such a relaxation would not interfere with timely attainment and maintenance of the relevant air quality standards and secondarily on two grounds: (1) That the regulation does not meet the Part D requirement of reasonably available control technology (RACT) for some sources in nonattainment areas and (2) that the State had not corrected certain legal and technical deficiencies in the regulation which are discussed later in this notice. On August 22, 1984, however, the United States Court of Appeals for the Seventh Circuit declared SIP APC 3 invalid as applied to non-combustion sources. *Bethlehem Steel Corporation* v. *Gorsuch*, No. 82-2884.

As a result of this decision, EPA has re-examined its previous disapproval of 1980 APC 3 and has concluded that it should rescind that disapproval and approve 1980 APC 3. This Notice sets forth the reasons for this conclusion and proposes those actions.

II. Background

In 1972 Indiana adopted and EPA approved a state implementation plan (SIP) that included a regulation prohibiting the emission from "any combustion installation" of smoke darker than No. 2 of the Ringelmann Chart. This regulation was known as 1972 APC 3. The SIP also included other particulate control regulations, such as APC 5, which placed limits on the actual mass emissions of particulates from non-combustion sources; APC 4R, which placed limits on the actual mass emissions from combustion sources: and APC 6, which placed limits on actual mass emissions from foundries.

In 1974 the State of Indiana revised 1972 APC 3, and explicitly made it applicable as an independent control on both non-combustion and combustion sources. This revised regulation was known as 1974 APC 3. 1974 APC 3 imposed a 40 percent opacity limit,[1] subject to an exclusion of fifteen minutes per day during which opacity could exceed that amount. EPA approved the 40 percent limit but disapproved the 15-minute exemption. Accordingly, the federal codification of the Indiana SIP, 40 CFR 52.776(c), provided:

> APC 3 of Indiana's Air Pollution Control Regulations (visible emissions limitation) is disapproved insofar as the phrase "for more than a cumulative total of 15 minutes in a 24-hour period" will interfere with attainment and maintenance of particulate standards.

Until the recent court ruling, 1974 SIP APC 3 was the regulation on the books for opacity in Indiana. Its present formulation resulted from APA's partial approval of Indiana's submission. 40 FR 50032 (October 28, 1975). In that form, it limited opacity to no greater than 40 percent but did not provide the 15-minute period per day when that limit could be exceeded, nor did it specify a method for determining when the 40 percent limit was exceeded.

On December 16, 1983, EPA disapproved a subsequent Indiana regulation, which had been submitted as a revision to the SIP by Indiana on October 6, 1980 (1980 APC 3). The Notice of Disapproval interpreted SIP APC 3 to work in instantaneous terms—that is, to disallow any exceedances of 40 percent

[1] A 40 percent opacity limit is comparable to No. 2 on the Ringelmann Chart.

opacity.[2] The 1980 regulation, by allowing opacity to be determined on the basis of a 6-minute average, allowed some emissions that exceeded the 40 percent limit, as so interpreted; and EPA, therefore, disapproved it because it relaxed existing provisions and the State had failed to demonstrate that the relaxation would not interfere with timely attainment and maintenance of the relevant air quality standards. APC 3, as originally submitted by Indiana in 1974, however, provided a 15-minute exemption. EPA, by disapproving the time exemption and approving a bare 40 percent opacity limit, made the regulation susceptible to interpretation as disallowing any exceedances whatsoever. This possible reading, however, resulted from EPA's editing. Indiana never expressed an intent to have the 40 percent limit interpreted to apply this way; nor did it so enforce it.

III. Judicial Review of 1974 SIP APC–3

EPA's partial approval of 1974 APC 3 was never challenged within the deadline prescribed by the pre-1977 Clean Air Act (Section 307(b)(1), 42 U.S.C. 1857h–5(b)(1) (1976)). It has been subject, however, to a series of collateral attacks in enforcement related proceedings.

In *Public Service Co. of Indiana* v. *EPA*, 682 F.2d 626 (7th Cir. 1982), cert. denied, 103 S.Ct. 762 (1983), the court, though realizing the issue was not squarely before it, held that, in general, EPA had power to approve one part of a state submission and disapprove the rest. It based its decision both on textual grounds and on the argument that this power would advance the goals of the Clean Air Act by allowing EPA to effectuate state regulatory choices to the maximum degree possible. In *Bethlehem Steel Corp.* v. *Gorsuch*, 726 F.2d 356 (7th Cir. 1984) (*Bethlehem II*),[3] vacated and rehearing granted (Apr. 27, 1984), opinion on rehearing (Aug. 22, 1984) (*Bethlehem III*), the court particularized this analysis. In *Bethlehem II*, the majority upheld EPA's partial approval of 1974 APC 3. On rehearing, however, in *Bethlehem III*, the Court readdressed the question in more depth and invalidated EPA's partial approval of 1974 APC 3 as applied to non-combustion sources.

IV. The Bethlehem III Decision

Petitioners in *Bethlehem III* argued that 1974 APC 3 was defective because EPA—

> Had improperly used the technique of 'partial approval' to make 1974 APC 3 a stricter regulation than the state had intended either in the state's own version of 1974 APC 3 or in the previous regulation, 1972 APC 3.

The court tested this assertion by its own comparison of 1974 APC 3 with its predecessor, 1972 APC 3. The court interpreted 1972 APC 3 as setting an opacity limitation of Number 2 on the Ringelmann Chart on emissions from combustion sources only. As to non-combustion sources, however, the court held that an exceedance of this opacity limitation would at most "violate the regulation prima facia [so that a company] can rebut the prima facie case by showing that the level of particulates in its non-combustion emissions is within the ceiling fixed by APC 5." Slip Op. at 4.

After setting forth its interpretation of 1972 APC 3, the *Bethlehem III* court compared that regulation both to 1974 APC 3 as enacted by Indiana and to 1974 SIP APC 3 as approved by EPA. As to combustion sources, the court held that the only significant difference between the 1972 and 1974 regulations enacted by Indiana was that 1974 APC 3 created a 15-minute per day exemption. Thus, when EPA approved APC 3's 40 percent opactiy limitation, but disapproved the 15-minute exemption, it merely—

> Disapproved the state's attempt to relax its regulation of those installations. As to them, the EPA's 'partial approval' . . . was snugly within the EPA's power. Slip Opinion at 10.

But, the court found,

> With regard to non-combustion emissions, 1974 APC 3, at least when stripped of its 15-minute blow-off provision, stiffened the preexisting regulation. It made the 40 percent opacity limitation mandatory for such sources for the first time. Before then, as we have seen, the limitation only put the source to its proof of compliance with APC 5, and maybe didn't even do that. Id.

The court determined that—

> By revising 1974 APC 3 as it did, the EPA converted 40 percent opacity from (at most) a trigger to a ceiling, thus making the state's control of non-combustion emissions more stringent on its face than the state had ever intended it to be. Id. at 10–11.

The *Bethlehem III* court held that this action by EPA was at odds with the Clean Air Act and, therefore, impermissible. While, as the *Public Service* case showed, EPA is empowered to disapprove an attempt by the state to weaken its existing plan with respect to combustion sources, it may not, by the mechanism of a "partial disapproval" significantly increase the stringency of a state regulation.

V. Current State of Indiana Opacity SIP Provisions

The effect of the Seventh Circuit's decision in *Bethlehem III* on the current opacity SIP provisions in Indiana appears to be as follows:

(1) With respect to combustion sources, 1974 SIP APC 3 is still in force. The Court found that, when EPA excised the time exemption from 1974 APC 3 insofar as it applied to combustion sources, it was merely preventing the state from weakening its previous regulation.

(2) With respect to non-combustion sources, the Court invalidated 1974 SIP APC 3. In accordance with EPA's "continuity policy", the valid SIP directly preceding 1974 APC 3 takes its place. This means that 1972 APC 3 is now the opacity regulation applicable to non-combustion emissions in Indiana.

VI. Effect of Bethlehem III on Proposed 1980 APRC–3

In December 1983, when EPA issued its Notice of Disapproval of Indiana's 1980 APC 3, the existing SIP provisions and the Agency's view of those provisions were quite different from those outlined above. Principally, EPA based its disapproval of 1980 APC 3 on the grounds that the revisions contained in that regulation would constitute a significant relaxation in relation to 1974 SIP APC 3 that the State had not justified by an attainment demonstration. Now, however, the Seventh Circuit's decision and its impact on 1974 APC 3 prompt EPA to reconsider that disapproval, and to propose to approve 1980 APC 3 for both non-combustion and combustion sources, for the following reasons:

1. Non-Combustion Sources

The *Bethlehem III* Court invalidated SIP APC 3 with respect to non-combustion emissions, and left 1972 APC 3 as the only opacity limitation applicable to these emissions. Thus, for non-combustion emissions, the Agency

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[2] 48 FR 55852 et seq. (December 16, 1983). In 1979, Indiana had adopted a revised APC 3 ("1979 APC 3") (subsequently codified as 325 IAC 1–3.1), which it submitted to EPA as a proposed SIP revision. 1979 APC 3 provided for averaged opacity limitations, and repealed 1974 APC 3.

On March 27, 1980, EPA proposed to disapprove 1979 APC 3 with respect to all sources except iron and steel sources. 45 FR 20432. On July 3, 1980, EPA proposed to disapprove 1979 APC 3 with respect to iron and steel sources for the same reasons cited in its earlier Notice. 45 FR 45314. EPA never took final action on 1979 APC 3. In its December 16, 1983 Notice on 1980 APC 3, EPA announced that it had "discontinued rulemaking" on 1979 APC 3, since it regarded 1980 APC 3 as a "substitute for 1979 APC 3". 48 FR 55853.

[3] This opinion followed a prior opinion in the same case, *Bethlehem I* (*Bethlehem Steel Corp.* v. *EPA*, 638 F.2d 994 (7th Cir. 1980)), in which the court remanded the case to EPA to supplement the record, without deciding the issue of partial approval.

must no longer judge the relative strength or laxity of 1980 APC 3 in comparison to 1974 APC 3, but rather in relationship to 1972 APC 3.

The Court held that, at most, 1972 APC 3 imposed a prima facie opacity limitation on non-combustion emissions, rebuttable by evidence of compliance with mass emissions limitations. The Court was not precise in constructing the exact meaning of 1972 APC 3 as applied to noncombination sources. Any colorable interpretation of the Court's ruling, however, leads to the same conclusion—the provisions of 1980 APC 3 are stricter, not more lenient than those of 1972 APC 3.

1980 APC 3, in contrast to 1972 APC 3, provides specific, mandatory opacity limits for noncombustion sources. 1980 APC 3 sets a mandatory 40 percent opacity limit for "attainment areas" and a 30 percent limit for "nonattainment areas", both as classified by the State. These limits are to be determined as averages over a 6-minute period. The regulation further provides for a 60 percent opacity limit as an additional "cap" on the 40 and 30 percent opacity averaged limitations. This 60 percent limit is not to be exceeded for a cumulative total of more than 15 minutes in any six-hour period, and applies simultaneously with the general 40 and 30 percent average limits. Therefore, approval of 1980 APC 3 would strengthen controls on non-combustion sources.

2. Combustion Sources

The *Bethlehem III* Court followed the *Public Service* decision in upholding EPA's partial approval of 1974 APC 3 as applied to combustion sources. The Court found that, when EPA disapproved the 15-minute exemption in 1974 APC 3, the only effect on combustion sources was to maintain the standard set by 1972 APC 3.[4] Thus, *Bethlehem III* left 1974 APC 3 intact as it applies to combustion sources.

The Agency must, therefore, still compare 1980 APC 3 to 1974 SIP APC 3 to determine whether it sets an approvable standard for combustion sources.

In EPA's December 16, 1983, Notice of Disapproval, the Agency construed SIP APC 3 to apply in instantaneous terms, that is to bar any exceedance of a 40 percent opacity limit. For a number of reasons, however, the Agency now believes that, as a result of the Court's ruling in *Bethlehem III*, the better interpretation of that regulation is to apply an averaging approach as many commenters have contended. The Agency reaches this conclusion after considering, not just the impact of the decision, but the characteristics of emissions from combustion sources, expressions of State intent, and the desirability of consistency of regulation between combustion and non-combustion sources.

a. The Impact of the Bethlehem decision

As a result of the *Bethlehem III* decision, 1974 SIP APC 3 applied only to combustion sources. For the most part these sources generate continuous emissions, for which it is generally agreed that averaging methods, rather than instantaneous measurements, are appropriate. In any event, EPA's December 16, 1983, Notice of Disapproval, which adopted an instantaneous interpretation of 1974 SIP APC 3, observed that 1980 SIP APC 3—

> Would not be a significant relaxation of the SIP as it affects continuous sources whose opacity does not significantly vary over a 6-minute period.

48 FR 55855 (December 16, 1983).

b. Expressions of State Intent

By deleting 1974 APC 3's time exemption, EPA ran counter to Indiana's intent to temper (1) the stringency of the regulation and (2) the application of a fully instantaneous measurement method. Insofar as possible, EPA should interpret 1974 SIP APC 3 to respect this intent.

c. Enforcement Practice

EPA's partial disapproval of 1974 APC 3 has resulted in confusing and inconsistent enforcement policies. Using 6-minute averaging, as contained in 1980 APC 3, for enforcing opacity limits in relation to combustion sources resolves any such confusion.

d. Regulatory Consistency

Approving 1980 APC 3 for combustion sources would also be consistent with the Agency's proposal to approve 1980 APC 3's 6-minute averaging provisions with respect to non-combustion sources, because the same rule would apply to all sources.

Having thus interpreted 1974 SIP APC 3, the Agency must compare it to 1980 APC 3. EPA has determined that 1980 APC 3 is equal to or more stringent than 1974 APC 3 as applied to combustion sources. Like 1974 APC 3, 1980 APC 3 imposes a 40 percent opacity limit in attainment areas, and it is stricter than 1974 APC 3 in imposing a 30 percent limit in nonattainment areas. It, therefore, is approvable with respect to those sources.

VII. Indiana Supreme Court Decision

This proposal to approve 1980 APC 3 is subject to the resolution of a problem arising from a recent decision of the highest state court in Indiana. In December 1983, the Indiana Supreme Court held that the designation of Wayne County, Indiana, as a "nonattainment" area for sulfur dioxide constituted "adjudication" requiring a formal hearing under Indiana law. *Indiana Air Pollution Control Board et al.* v. *City of Richmond*, No. 1283 S 472 (December 30, 1983). Since 1980 APC 3 imposes stricter standards on "nonattainment" areas than on others, and since adjudication procedures concededly have not been followed for such decisions in the past, this decision raises a number of questions and could be construed to have either a great or a minimal effect on Indiana's designation scheme in general and 1980 APC 3 in particular. EPA believes the most likely outcome is that the *City of Richmond* decision will not affect any designations that have already been made and were not challenged, or that the regulation will simply be read as applying the 40 percent opacity limit that governs in attainment areas, to areas that have not been designated "nonattainment" by adjudicatory procedures. In either of these latter instances, 1980 APC 3 would retain substantial vitality and EPA would, therefore, be able to approve it.

To speed resolution of the uncertainties generated by the *City of Richmond* decision, EPA has requested the Office of the Attorney General for the State of Indiana for an Opinion regarding the impact of that decision.

Accordingly, EPA proposes to approve 1980 APC 3 for the reasons stated above, provided that the effect of the Indiana Supreme Court's decision can be satisfactorily resolved, and that certain technical defects in the proposed regulation be cured.[5]

[4] The Court noted that 1972 APC 3 spoke in terms of a limit set at No. 2 of the Ringlemann Chart, while 1974 SIP APC 3 is couched in terms of 40 percent opacity. It found, however, that "No. 2 on the Chart is a commonly used proxy for 40 percent opacity"; and thus saw no significant differences in the limits set by each regulation. Slip Opinion at 4.

[5] In its December 1983 Notice of Disapproval of 1980 APC 3, EPA noted that Indiana had agreed to correct six technical deficiencies in the proposed SIP revision if EPA conditionally approved (or approved) 1980 APC 3. EPA requests that Indiana make these already agreed-upon technical corrections, which are:

(1) Clarify that the 60 percent opacity limit (to be exceeded for a cumulative total of no more than 15 minutes in a 6-hour period) applies simultaneously with the general 40 percent (30 percent in nonattainment areas) opacity 6-minute average limit.

Continued

Conclusion

Since Indiana has non-attainment areas for particulates, Part D, as well as Section 110, of the Clean Air Act governs evaluation of this SIP revision.

1980 APC 3 is not as stringent as EPA normally requires for States which, like Indiana, have not attained the National Ambient Air Quality Standards. It does not represent "Reasonably Available Control Technology" for many source categories. In addition, the State of Indiana has failed to supply any quantitative analysis showing that the proposed rules, without tightening, are consistent with attainment and maintenance of the standards. The Indiana SIP, therefore, could not be regarded as meeting the full requirements of Part D of the Clean Air Act even if EPA were to make today's proposal final.

For these reasons, EPA will continue to evaluate the adequacy of this SIP and may require submission of supplementary information and control measures by Indiana; and, if necessary, EPA will take appropriate remedial action if deficiencies are not corrected.

1980 APC 3, however, does represent the current State position on the regulation of opacity of particulate sources in a situation where the existing regulatory system is plainly inadequate. It reflects the current State law and policy choices in an area substantially confused by a long history of litigation. It is in no way inconsistent with future adoption of additional rules to meet the full requirements of the Clean Air Act. EPA requests comment on this conclusion. In such exceptional circumstances, there is no reason for EPA not to propose approval of a State rule, which is both more clearly valid and generally stricter than the SIP provisions it replaces.

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[2] Clarify that the rule applies to *all* sources of visible emissions. Therefore, both stack and non-stack sources are subject to the rule.

[3] Amend the regulation so that its internal references are consistent.

[4] Delete the term "intermittent source" from the regulation.

[5] Clarify Sections 3(a) and (b), which contain the term "continuous minutes". The intent of Section 3(a) is to allow one period per any 24-hour period during either a startup or shutdown where the opacity limits may be exceeded. This period cannot exceed 10 minutes in duration. Section 3(b) is intended to allow exceedances for boiler cleaning with such exceedances similarly limited to 3 occurrences in any 12-hour period, with no more than one occurrence in any 60 minutes, each occurrence being limited to a maximum of 5 minutes duration.

[6] Delete the provisions that in-stack monitors take precedence over observations by qualified personnel.

48 FR 55853–55854 (December 16, 1983).

VIII. Miscellaneous

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. Pursuant to the provisions of 5 U.S.C. 605(b), EPA certifies that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709 (January 27, 1982).

List of Subjects in 40 CFR Part 52

Air pollution control, intergovernmental relations, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Date September 17, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84–29939 Filed 11–14–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 170

[OPP–250052; PH–FRL–2606–8]

Worker Protection Standards for Agricultural Pesticides

Correction

In FR Doc. 84–21117, beginning on page 32605, in the issue of Wednesday, August 15, 1984, make the following correction:

On page 32607, column one, in the table, sixth entry "Phosaline" should read "Phosalone".

BILLING CODE 1505–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6630]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Food Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0700.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premimum rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal

standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Mammoth (town) Pinal County	San Pedro River	Intersection of Main Street and Galiuro Street	(1)	*2,348
Maps available for inspection at Town Hall, Mammoth, Arizona.					
Send comments to the Honorable Dwight Large, P.O. Box 30, Mammoth, Arizona 85618.					
Arkansas	Jacksonville, City, Pulaski County	Jack Bayou Main Stem	Downstream side of U.S. Highway 67 & 167	N/A	*258
		Bayou Meto Main Stem	Upstream side of Missouri Pacific Railroad	N/A	*247
			Approximately 1.3 miles upstream of U.S. highway 67 & 167.	N/A	*251
		Rocky Branch	Confluence with Meto Bayou Main Stem	N/A	*249
Maps available for inspection at the Office of the City Engineer, City Hall, Jacksonville, Arkansas.					
Send comments to the Honorable James Reid, Mayor of the City of Jacksonville, P.O. Box 126, Jacksonville, Arkansas 72076.					
Arkansas	Little Rock, City, Pulaski County	Grassy Flat Creek	Downstream side of Converse Drive	*391	*392
			Upstream side of Interstate 430	*406	*405
			Market Street	*421	*419
			Downstream side of Plainwood Drive	*425	*424
			Upstream side of Pleasant Valley Drive	*456	*455
		Rock Creek	Downstream side of Asher Avenue	*270	*265
			Upstream side of Asher Avenue	*272	*268
			Upstream side of 36th Street	*278	*277
		Taylor Loop Creek	Approximately 1,200 feet downstream of Taylor Loop Road.	(2)	*311
			Upstream side of Grishman Road	(2)	*319
			Approximately .37 mile upstream of Grishman Road	(2)	*331
			Upstream of Pebble Beach Drive	(2)	*362
			Approximately .47 mile upstream of Pebble Beach Drive.	(2)	*364
Maps available for inspection at the City Hall, Room 203, Markham and Broadway Streets, Little Rock, Arkansas.					
Send comments to Honorable J.W. Benafield, Mayor of the City of Little Rock, City Hall, Room 203, Markham and Broadway Streets, Little Rock, Arkansas 72201.					
California	Ontario (City of) San Bernardino County.	Ponding Area	50 feet north of the San Bernardino Freeway Crossing Ontario Motor Speedway Drain.	*985	*983
Maps available at Building Department, 303 East B Street, Ontario, California 91764.					
Send comments to Honorable Robert Ellingwood, 303 East B Street, Ontario, California 91764.					
Delaware	Fenwick Island, Town, Sussex County.	Atlantic Ocean and Little Assawoman Bay.	Intersection of King Street and Bunting Avenue	*11	*10
			Intersection of Bay Street and James Street	*9	*5
			East side of intersection of Cannon Street and Ocean Highway.	*10	*9
			Intersection of Madison Avenue and Glen Avenue	*7	*4
Maps available for inspection at the Fenwick Island Town Hall, Fenwick Island, Delaware.					
Send comments to Honorable Paul L. Negley, President of Fenwick Island Town Council, R.D. 1, Box 440, Selbyville, Delaware 19975.					
Delaware	South Bethany, Town Sussex County.	Atlantic Ocean & Assawoman Canal.	West side of intersection of New Castle Drive and Ocean Highway.	*8	*7
			West side of intersection of Bayshore Drive and Ocean Highway.	*8	*7
			Victoria Canal	*6	*4
			6th Canal	*6	*4
Maps available for inspection at the Town Hall, South Bethany, Delaware.					
Send comments to Honorable Margaret Gassimger, Mayor of the Town of South Bethany, 402 Evergreen Road, South Bethany, Delaware 19930.					
Georgia	Unincorporated Areas of Fulton County.	Autry Mill Creek	At mouth	*892	*891
			About 1,400 feet upstream of mouth	*892	*891
		Ball Mill Creek	At mouth	*869	*872
			About 900 feet upstream of mouth	*871	*872
		Boat Rock Creek	At mouth	*757	*759
			About 600 feet downstream of State Route 70	*759	*759
		Caney Creek	About 0.39 mile downstream of Shirley Bridge Extension.	(2)	*994
			Just upstream of Shirley Bridge Extension	(2)	*1,007
		Chattahoochee River	About 200 feet upstream of the confluence of Camp Creek.	*749	*749
			About 700 feet upstream of Interstate 20	*780	*765
			Just downstream of Powers Ferry Road	*790	*792
			Just downstream of Morgan Falls Dam	*813	*819
			Just upstream of Morgan Falls Dam	*854	*851
			About 1.2 miles upstream of State Route 141	*898	*898
		Colewood Creek	At mouth	*804	*806
			About 150 feet upstream of mouth	*806	*806
		Deep Creek	At mouth	*749	*748
			About 0.9 mile upstream of State Route 154	*749	*748
		Foe Killer Creek	At confluence with Big Creek	(2)	*962

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			About 0.15 mile upstream of the confluence with Big Creek.	(2)	*962
			About 0.30 mile upstream of Rucker Road	(2)	*1,034
			About 0.36 mile upstream of Mid Broadwell Road	(2)	*1,055
		Long Island Creek	At mouth	*775	*778
			About 0.32 mile upstream of mouth	*778	*778
		Marsh Creek	At mouth	*809	*811
			About 1,200 feet upstream of mouth	*811	*811
		Riverside Creek	At mouth	*754	*755
			About 2000 feet upstream of Riverside Drive	*754	*755
		Strickland Creek	Just upstream of Houze Road	(2)	*1,052
			About 0.14 mile upstream of Houze Road	(2)	*1,057
		Tributary 6	About 480 feet upstream of Academy Street	(2)	*1,022
			About 860 feet upstream of Academy Street	(2)	*1,022
		Utoy Creek	At mouth	*757	*761
			Just downstream of Great Southwest Parkway	*761	*761

Maps available for inspection at the Fulton County Courthouse, 165 Central Avenue SW., Atlanta, Georgia 30303.

Send comments to Honorable Michael Lomax, Chairman, County Commissioners, Fulton County, Fulton County Courthouse, 165 Central Avenue SW., Room 208, Atlanta, Georgia 30303.

Illinois	Unincorporated Areas of St. Clair County.	Little Canteen Creek	About 5,700 feet downstream of Circle Drive	(2)	*456
			About 800 feet upstream of Circle Drive	(2)	*473
		Ash Creek	At mouth	*425	*425
			Just upstream of State Route 177	*425	*427
			About 2,300 feet upstream of Keck Road	*428	*427
			Just upstream of State Route 161	*431	*431
			Just downstream of State Route 158	*442	*438
		Engle Creek	About 3,000 feet upstream of County Road 43	(2)	*509
			About 4,400 feet upstream of County Road 43	*514	*514

Maps available for inspection at the Intergovernmental Grants Department, Community Development Division, St. Clair County Courthouse, Belleville, Illinois 62220.

Send comments to Honorable Jerry Castello, Chairman of the Board, St. Clair County, St. Clair County Courthouse, 19 Public Square, Belleville, Illinois 62220.

Indiana	Town of Bristol, Elkhart County	St. Joseph River	About 1.29 miles downstream of Division Street	*754	*752
			About 0.77 mile upstream of Division Street	*758	*756
		Little Elkhart River	At mouth	*757	*755
			About 0.59 mile upstream of State Route 15	*757	*757

Maps available for inspection at the Bristol Town Hall, P.O. Box 122, Bristol, Indiana.

Send comments to Honorable Vivian Kane, Chairman of the Board, Bristol, P.O. Box 122, Bristol, Indiana 46507.

Indiana	City of Elkhart, Elkhart County	St. Joseph River	About 0.63 mile downstream of Nappanee Street	*721	*721
			Just downstream of Indiana & Michigan Electric Co. Dam.	*731	*730
			Just upstream of Indiana & Michigan Electric Co. Dam	*742	*742
			About 1.55 miles upstream of the confluence of Puterbaugh Creek.	*746	*743
		Elkhart River	At mouth	*730	*729
			Just downstream of Elkhart Avenue	*730	*729
		Puterbaugh Creek	At mouth	*744	*742
			Just downstream of Greenleaf Boulevard	*744	*742

Maps available for inspection at the Planning Office, Municipal Building, Elkhart, Indiana 46516.

Send comments to Honorable James P. Perron, Mayor, City of Elkhart, Municipal Building, Elkhart, Indiana 46516.

Indiana	Unincorporated Aeas, Elkhart County.	St. Joseph River	About 1.72 miles downsteam of the confluence of Pine Creek.	*745	*743
			About 2.05 miles upstream of the confluence of Washington Township Ditch.	*755	*752
			About 1,100 feet downstream of the east bound lane of the Indiana East-West Toll Road.	*758	*756
			About 1.73 miles upstream of the confluence of Trout Creek.	*762	*760
		Pine Creek	At confluence with St. Joseph River	*747	*744
			Just upstream of State Route 120	*748	*748

Maps available for inspection at the Planning Department, Elkhart, Indiana.

Send comments to Honorable Hal Doriot, County Commissioner, County Commissioner's Office, Elkhart County Courthouse, Goshen, Indiana 46526.

Iowa	City of Evansdale; Black Hawk County.	Cedar River	About 1.5 miles downstream of confluence of Elk Run Creek.	*838	*833
			About 3.55 miles upstream of Illinois Central Gulf Railroad.	*845	*843
		Elk Run Creek	At mouth at Cedar River	*839	*836
			Just upstream of U.S. Highway 20	*844	*842

Maps available for inspection at the Mayor's Office, 123 N. Evans Road, Evansdale, Iowa 50707.

Send comments to Honorable frederick M. Saul, Mayor, City of Evansdale, 123 N. Evans Road, Evansdale, Iowa 50707.

Louisiana	Lafayette, City Lafayette Parish	Lateral F	Approximately 500 feet upstream of upstream corporate limits.	(3)	*32
		Lateral No. 1 West Channel	Upstream of U.S. Route 90	(3)	*36

Maps available for inspection at the Lafayette City Hall, P.O. Box 4017-C, Lafayette, Louisiana.

Send comments to Honorable Dud Lastrapes, Mayor of the City of Lafayette, P.O. Box 4017-C, Lafayette, Louisiana 70502.

Louisiana	Lafayette Parish	Beau Basin	Approximately 1,050 feet upstream of corporate limits at limit of flooding affecting parish.	(3)	*41

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
	Lateral F2	West Coulee Mine	Approximately 200 feet upstream of Interstate 10	(3)	*38
			At downstream side of Old Spanish Trail	(3)	*33
		Lateral F	At downstream corporate limits with Town of Scott	(3)	*36
			Approximately 3,750 feet downstream of Interstate 90	(3)	*32
Maps available for inspection at the Lafayette Parish Court P.O. Box 2009, Lafayette, Louisiana.					
Send comments to Honorable Don Guilliot, Clerk of the Court of Lafayette Parish, P.O. Box 2009, Lafayette Parish, Louisiana 70502.					
Maryland	Anne Arundel County	Hall Creek	Downstream corporate limits	(2)	*44
			Most upstream corporate limits	(2)	*53
			Approximately 1,600' upstream of most upstream corporate limits.	(2)	*55
Maps available for inspection at the Office of Planning and Zoning, Arundel Center, Room 202, Calvert and Clay Streets, Annapolis, Maryland.					
Send comments to Honorable O. James Lighthizer, Anne Arundel County Executive, Arundel Center, 44 Calvert Street Annapolis, Maryland 21401.					
Maryland	Laurel, City Prince Georges County.	Patuxent River	Downstream corporate limits	(2)	*122
			Downstream side of State Route 198	*198	*134
		Crows Branch	Confluence with Patuxent River	(2)	*122
			Approximately 1,000 feet downstream of State Route 197.	(2) *126	
Maps available for inspection at the Laurel City Hall, Laurel, Maryland.					
Send comments to Honorable Robert J. DiPitro, Mayor of the City of Laurel, 350 Municipal Square, Laurel, Maryland 20707.					
Massachusetts	Boylston, Town, Worcester County.		Approximately 1,400 feet downstream of Sewall Pond Outlet.	(2)	402
			Sewall Pond Outlet	*400	*402
			Approximately 400 feet downstream of Access Road at YMCA culvert.	*401	*402
Maps available for inspection at the Municipal Office Building, 84 Main Street, Boylston, Massachusetts.					
Send comments to Honable Guy Fuller, Chairman of the Boylcston Board of Selectmen, 84 Main Street, Boyleston, Massachusetts 01505.					
Michigan	City of Ann Arbor, Washtenaw County.	Huron River	Just upstream of Broadway Street	*767	*767
			Just downstream of Argo Dam	*774	*768
			Just upstream of Argo Dam	*774	*774
		Allen Creek Overland Flow	At mouth	*773	*768
			Just downstream of Conrail (downstream crossing)	*778	*768
			Just upstream of Conrail (downstream crossing)	*779	*777
			Just downstream of Hoover Avenue	*826	*825
			Just downstream of South Main Street	(2)	*874
		Eberwhite Drain Overland Flow	At confluence with Allen Creek Overland Flow	(2)	*811
			Just downstream of Lutz Avenue	(2)	*866
		Murray-Washington Drain Overland Flow.	At confluence with Allen Creek Overland Flow	(2)	*802
			Just downstream of 7th Street	(2)	*820
			About 150 feet upstream of 7th Street	(2)	*830
			About 1,000 feet upstream of 8th Street	(2)	*832
		West Park-Miller Drain Overland Flow.	At confluence with Allen Creek Overland Flow	(2)	*800
			At confluence of West Park-Miller Drain South Branch Overland Flow.	(2)	*801
		West Park-Miller Drain North Branch Overland Flow.	At confluence with West Park-Miller Drain Overland Flow.	(2)	*801
			Just downstream of Wesley Street	(2)	*850
		West Park-Miller Drain South Branch Overland Flow.	At confluence with West Park-Miller Drain Overland Flow.	(2)	*801
			Just downstream of North Revena Boulevard	(2)	*850
Maps available for inspection at the City Hall, 100 North Fifth Street, Ann Arbor, Michigan 48107.					
Send comments to Honorable Lewis D. Belcher, Mayor, City of Ann Arbor, P.O. Box 8647, Ann Arbor, Michigan 48107.					
Michigan	City of Trenton, Wayne County	Frank and Poet Drain	Just upstream of Vreeland Road	*582	*582
			Just upstream of Conrail	*585	*584
			Just downstream of King Road	*588	*587
		Marsh Creek	About 800 feet upstream of West Road		*591
			Just downstream of King Road		*592
Maps available for inspection at the Engineering Department, 2800 Third Street, Trenton, Michigan.					
Send comments to Honorable George W. Mans, Jr., Mayor City of Trenton, 2800 Third Street, Trenton, Michigan 48183.					
Missouri	City of Old Monroe, Lincoln County.	Cuivre River	About 0.15 mile downstream of Burlington Northern Railroad.	*445	*445
			About 0.16 mile upstream of State Highway 79	*447	*445
Maps available for inspection at Second and Sycamore Streets, Old Monroe, Missouri.					
Send comments to Honorable James Russell, Mayor, City of Old Monroe, Second and Sycamore Streets, P.O. Box 213, Old Monroe, Missouri 63369.					
New Hampshire	Newport, Town, Sullivan County	Sugar River	At confluence of North Branch Sugar River	*774	*773
			Upstream side of Oak Street	*783	*780
			Upstream side of Belknap Avenue	*790	*786
			At confluence of South Branch Sugar River	*791	*788
			Upstream of side of Cross Street	*818	*814
			At upstream side of the Old Wooden Bridge located Approximately 1,430 feet upstream of the dam.	*848	*845
			At confluence of Long Pond Brook	*852	*848
			Approximately 150 feet downstream of Sand Hill Road		*852
		North Branch Sugar River	At confluence with Sugar River	*774	*773
			Approximately 0.98 mile upstream of confluence with Sugar River.	*774	*773

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		South Branch Sugar River	At confluence with Sugar River	*791	*791
			Approximately 0.43 mile upstream of confluence with Sugar River.	*791	*788

Maps available for inspection at the Municipal Building, 15 Sunapee Street, Newport, New Hampshire.

Send comments to Honorable Arnold Greenleaf, Chairman of the Board of Selectmen for the Town of Newport, 15 Sunapee Street, Newport, New Hampshire 03770.

New Jersey	Lawrence, Township, Mercer County.	Shabakunk Creek	Upstream side of U.S. Route 1	*54	*55
			Upstream side of U.S. Route 206	*61	*63
			At confluence of West Branch-Shabakunk Creek	*62	*64
			At upstream corporate limits	*72	*73
		West Branch-Shabakunk Creek	At confluence of Shabakunk Creek	*62	*64
			At upstream corporate limits	*64	*68
		Little Shabakunk Creek	Upstream side of U.S. Route 1	*51	*56
			Upstream side of Princeton Pike	*64	*65
			Upstream side of US 206	*79	*82
			At abandoned railroad bridge (Trenton-Lawrenceville)	*96	*99
			Approximetely 475' Kupstream of abandoned railroad bridge (Trenton-Lawrenceville).	(3)	*101
		Tributary A	At confluence with Little Shabakunk Creek	*86	*88
			Approximately 350' upstream of confluence with Little Shabakunk Creek.	*87	*88

Maps available for inspection at the Township Manager's Office, 2207 Lawrenceville Road, Lawrenceville, New Jersey.

Send comments to Honorable Robert J. Albertson, Lawrence Township Manager, P.O. Box 6006, Lawrenceville, New Jersey 08648.

New Jersey	Montville, Township, Morris County.	Passaic River	Upstream Bloomfield Avenue	*173	*174
		Rockaway River	At confluence with Passaic River	*173	*174
			Upstream side of U.S. Route 46	*174	*175
			Upstream side of Vail Road	*178	*177
			Approximately 200 feet upstream Knoll Road	*182	*184
		Crooked Brook	Approximately 700 feet above River Road	*183	*184

Maps available for inspection at the Engineering Office, Sisco House, 132 Chain Bridge Road, Montville, New Jersey.

Send comments to Honorable Frederick E. Eckhardt, Mayor of the Township of Montville, 86 River Road, Montville, New Jersey 07045.

New Jersey	Stone Harbor, Borough, Cape May County.	Atlantic Ocean	Intersection of Third Avenue and 122nd Street	*12	*10

Maps available for inspection at the Stone Harbor Borough Hall, New Jersey.

Send comments to Honorable E. F. Pain, Administrative Assistant for the Borough of Stone Harbor, 9508 2nd Avenue, Stone Harbor, New Jersey 08247.

New York	Fayetteville, Village, Onondage County.	Limestone Creek: Main Channel (Before Levee overtopping).	Upstream of dam	*438	*436
			Approximately 90' downstream of Limestone Plaza	*438	*437
			Upstream of East Genesee Street	*444	*441
			Approximately 1,400' downstream of corporate limits	*454	*445
			At upstream corporate limits	*457	*452
		Limestone Creek: Overbank	Upstream side of Kennedy Street (extended)	*438	*433
			Upstream of East Genesee Street	*444	*437
			Approximately 258' Upstream of Sweet Road Part 2	*445	*441

Maps available for inspection at the Municipal Building, Fayetteville, New York.

Send Comments to Honorable James H. Lannon, Mayor of the Village of Fayetteville, 425 East Genesee Street, Fayetteville, New York 13066.

New York	Manlius, Town, Onondaga County.	Chittenango Creek	Downstream corporate limits	(2)	*392
			Approximately 200' upstream of Interstate 90 eastbound lane.	(2)	*401
			Upstream of Kirkville Road	(2)	*404
			Approximately 760' upstream of upstream corporate limits.	(2)	*408
			At Confluence with Chittenango Creek	(2)	*398
		Limestone Creek	Approximately 200' upstream of confluence with Chittenango Creek.	*395	*398
			Upstream State Route 115/North	*397	*398
			At downstream corporate limits of Village of Fayetteville.	*431	*432
			At upstream corporate limits of Village of Fayetteville	*457	*452
			Approximately 2290' downstream of Dam	*468	*467
		Limestone Creek overbank	At downstream corporate limits of Village of Fayetteville.	*431	*432
			Approximately 275' upstream of East Genesee Street	*445	*438

Maps available for inspection at the Town Hall, 301 Brooklea Drive, Fayetteville, New York.

Send comments to honorable Richard Lowenberg, Town Supervisor of Manlius, 301 Brooklea Drive, Fayetteville, New York 13066.

Ohio	Unincorporated Areas of Clermont County.	O'Bannon Creek	At County Boundary	(2)	*604
			About 0.8 mile upstream of State Route 132	(2)	*812
		Right Bank Tributary to O'Bannon Creek.	At mouth	(2)	*774
			Just upstream of County Road	(2)	*806
		East Fork Little Miami River	About 400 feet downstream of Round Bottom Road	*570	*527
			About 2.27 miles upstream of State Route 222	*608	*605
			About 250 feet downstream of State Route 133	*804	*804
			About 2.84 miles upstream of State Route 32	*832	*833

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Stonelick Creek	At confluence with East Fork Little Miami River	*541	*538
			About 1.9 miles upstream of State Route 132	*713	*714
Maps available for inspection at the County Planning Commission, 76 S. Riverside, Batavia, Ohio.					
Send comments to Honorable Dale S. Romohr, Chairman of the Board of Commissioners, 76 S. Riverside, Batavia, Ohio 45103.					
Rhode Island	Newport City, Newport County	Narragansett Bay	Newport Harbor shoreline	*15	*14
			Bridge Street	*15	*12
			Lucas Avenue	*15	*12
Maps available for inspection at Newport City Hall, 43 Broadway, Newport, Rhode Island.					
Send comments to the Honorable John E. Connors, Jr., City Manager of Newport, City Hall, 43 Broadway, Newport, Rhode Island 02840.					
Tennessee	City of Memphis, Shelby County	Fletcher Creek	Just upstream of New Macon Road	*252	*252
			Just downstream of Whitten Road	*264	*260
		Fletcher Creek Lateral B	At Mouth	*260	*257
			Just downstream of Raleigh LaGrange Road	*260	*260
		Tenmile Creek	About 480 feet upstream of Winchester Road	*281	*281
			Just downstream of Raines Road	*305	*308
			About 0.87 miles upstream of Pilot Drive	*326	*324
Maps available for inspection at the Memphis and Shelby County Office of Planning and Development, City Hall, 125 North Main Street, Memphis, Tennessee 38103.					
Send comments to the Honorable Richard C. Hackett, Mayor, City of Memphis, City Hall, 125 North Main Street, Memphis, Tennessee 38103.					
Texas	Point Comfort, City, Calhoun County.	Lavaca Bay	Shoreline at Austin Street (extended)	*18	*12
			Shoreline at most southern corporate limits	*18	*15
Maps available for inspection at City Hall, 108 Jones, Point Comfort, Texas.					
Send comments to Honorable Trinidad Rocha, Mayor of the City of Point Comfort, P.O. Box 399, Point Comfort, Texas 77978.					
Vermont	Orleans, Village, Orleans County	Barton River	Approximately 200' upstream of Maple Street	*705	*704
			Approximately 400' downstream of State Route 58 bridge.	*720	*721
			Approximately 300' downstream of State Route 58	*731	*730
			Upstream of State Route 58 bridge	*739	*738
			Downstream of footbridge located downstream of 2 crossovers to Ethan Allen plant.	*741	*740
Maps available for inspection at the Orleans Village Office, Memorial Square, Orleans, Vermont.					
Send comments to Honorable Edwin Gage, Trustee for the Village of Orleans, Village Office, Memorial Square, Orleans, Vermont.					
Virgin Islands Commonwealth	Atlantic Ocean (St. Thomas)		Shoreline at Coki Point	(*)	*5
Maps available for inspection at the Disaster Program Office, 2nd Floor, 7A Crystal Gad, St. Thomas, Virgin Islands.					
Send comments to Honorable Julio Brady, Lieutenant Governor of St. Thomas, Government House, P.O. Box 450, St. Thomas, Virgin Islands 00801.					
Virginia	Accomack County	Chesapeake Bay	North end of Pintail and Canvasback Lanes	*10	*7
			Intersection of Canvasback Lane and Black Mallard Way.	*8	*7
Maps available for inspection at the Department of Public Works, County Administration Building, Route 764, Accomack, Virginia.					
Send comments to Honorable Joseph DeMarino, Country Director of Public Works, P.O. Box 388, Accomack, Virginia 23301.					
Wisconsin	Village of DeForest, Dane County.	Yahara River	Just downstream of South Road	*925	*925
			Just upstream of Chicago, Milwaukee, St. Paul, and Pacific Railroad.	*932	*933
			Just upstream of North Street	*933	*934
			About 4,100 feet upstream of North Street	*935	*935
Maps available for inspection at 113 South Durkee Street, P.O. Box 515, DeForest, Wisconsin.					
Sent comments to Honorable Clifford A. Bass, Village Administrator, Village of DeForest, 113 South Durkee Street, P.O. Box 515, DeForest, Wisconsin 53532.					

[1] Not previously shown.
[2] None.
[3] Zone A.
[4] Zone B.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: November 5, 1984.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 84-29872 Filed 11-14-84; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-266; RM-4619]

FM Broadcast Station In Kahului and Wailuku, HI; Dismissal of Proposal

AGENCY: Federal Communications Commission.

ACTION: Proposed rule. Dismissal of proposal.

SUMMARY: Action taken herein dismisses the petition for rule making filed by Charles Joseph Thompson to assign FM Channel 294, to either Kahului or Wailuku, Hawaii, for failure to file comments reaffirming his intention to apply for the channel, if assigned. (MM Docket No. 84-266, RM-4619).

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

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b) table of assignments, FM broadcast stations (Kahului and Wailuku, Hawaii); MM Docket No. 84–266, RM–4619.

Adopted: October 29, 1984.
Released: November 8, 1984.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 10313, published March 20, 1984, proposing the assignment of FM Channel 294 to either Kahului as that community's first FM allocation or to Wailuku, as that community's second FM allocation. The *Notice* was adopted in response to a petition filed by Charles Joseph Thompson ("petitioner"). Petitioner failed to file comments reaffirming his intention to apply for the channel, if assigned, and no other comments on the proposal were received.

2. As stated in the *Notice*, a showing of continuing interest is required before a channel will be assigned. Therefore, in accordance with Commission policy, no further consideration will be given to the assignment of FM Channel 294 to either Kahului or Wailuku, Hawaii.

3. It is ordered, That the petition of Charles Joseph Thompson is dismissed and this proceeding is hereby terminated.

4. For further information concerning the above, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–29917 Filed 11–14–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

48 CFR Part 1480

Buy Indian Act; Procedures for Contracting With Indians Pursuant to the Act of June 25, 1910

November 8, 1984.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is publishing proposed rules which govern the implementation of Pub. L. 61–313, often referred to as the Buy Indian Act. These rules support the policy, procedures, and processes of the Bureau of Indian Affairs in its procurement relationships with eligible and certified Indian/Alaska Native economic enterprises for the purchase of the products of Indian industry.

DATE: Written comments must be received no later than December 15, 1984.

ADDRESS: Written comments may be directed to U.S. Department of the Interior, Bureau of Indian Affairs, Chief, Contracting and Grants Administration Staff, 1951 Constitution Avenue, N.W., Washington, D.C. 20245. The envelope front should bear the legend, "Buy Indian Act Comments", in the lower left corner.

FOR FURTHER INFORMATION CONTACT: Dr. Peter A. Campanelli, Contracting and Grants Administration Staff, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20245, telephone number (202) 343–5125.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301. The authorizing statute is Pub. L. 61–313 (25 U.S.C. 47).

Beginning on page 44678 of the October 8, 1982, **Federal Register** (47 FR 44678), a notice of proposed rulemaking was published to add a new Part 14H–71 to Subchapter 14H of Title 41 of the Code of Federal Regulations.

The public was given until January 6, 1983, to submit written comments, suggestions, or objections regarding the proposed rule. All comments received with respect to the proposed rule were given due study and consideration.

I. Changes Made Due to Editorial Review

An analysis of the rules material by the writers subsequent to publication of the proposed rules raised concerns with the format, style, content and text position. Therefore, the writers decided to reposition the text to delineate better the roles of the Bureau and of the offerors under the Act. This approach seemed to lend itself to a logical presentation of policy and procedures, while clarifying the contributions of both parties to the Act contract.

In addition to repositioning the text, the writers made significant changes to the rule contents in an attempt to: (1) strengthen the certification process for protection of the legitimate Indian/Alaska Native economic enterprise; (2) curtail the opportunities for potential fraud and abuse by ineligible economic enterprises; and (3) define Bureau procedures more clearly in the award process.

Therefore, the writers reviewed and accepted/rejected public comments submitted to the Bureau for the proposed rules that initially appeared on October 8, 1982. These proposed rules are offered for public comment and incorporate the accepted public comments submitted in response to the earlier notice for proposed rulemaking, as well as the significant editorial changes cited above.

Finally, the Federal Acquisition Regulation (FAR) was published in the **Federal Register** (Vol. 48, No. 182) on September 19, 1983, becoming effective on April 1, 1984. The FAR establishes a single (and primary) regulation for use by all Executive agencies in their procurement of supplies and services with appropriated funds. Thus, the FAR replaces the Federal Procurement Regulations (FPR), the latter reflecting rules and regulations for civilian agencies. With this FAR enactment, the Department of the Interior assigned Part 1480 of the new Title 48 of the Code of Federal Regulations to the Bureau of Indian Affairs acquisition management system. Thus, 48 CFR Part 1480 presents the proposed Buy Indian Act regulations previously referenced under the proposed 41 CFR 14H–71.

II. Changes Made Due to Comments Received

As a result of comments received for the proposed rules published on October 8, 1982, the following changes in these proposed regulations are made in addition to language changes for clarification:

(1) One comment requested inclusion of the term "Pueblo lands" in the definition of "Reservation", the point being that the former were not "reserved" in the same legal sense as other Indian lands. This change was made in § 1480.102.

(2) One comment pointed out that proposed § 14H–71.202(a)(3) was not consistent with the practice of limiting solicitation responses to Indian offerors. If so, a comparison could not be made to "non-Indian offerors". This phrase was changed to maintain procedural consistency in § 1480.105.

(3) To establish uniform qualification requirements, these proposed rules include Bureauwide use of a Qualification Questionnaire for Certification by eligible offerors; the issuance of a National Roster of Certified Indian/Alaska Native Economic Enterprises by the Bureau Central Office; and, the Bureauwide acceptance of the certification approval that is provided by a Level IV warranted Contracting Officer.

(4) Several comments were received on the definition of "100% Indian/Alaska Native Owned-or-Controlled". These proposed rules have deleted the term and address the issue under the new terms "Indian/Alaska Native Economic Enterprise", and "Owned-and-Controlled", in § 1480.102.

(5) One comment requested an implementation clause of preferred award of subcontracts. This provision has been stated in § 1480.403 to require a plan for approval by the Contracting Officer as required by provisions of 48 CFR 1404.70 and § 1452.202–72.

(6) The term "Indian Tribes" has been included in the definition of "Indian/Alaska Native Economic Enterprise" to indicate that Tribal government enterprises may become certified offerors under the Act. This is found in § 1480.102.

(7) Additional language was included under § 1480.207 on "Subsequent Involvement of Certified Offeror" to clarify the procedure when an eligible offeror makes its presence known after an unrestricted solicitation has been issued.

(8) A suggestion was made to require an appropriate and responsive subcontracting plan when an award is made to a non-Indian firm. Indian preference requirements for employment, training, subcontracting and subgrants are addressed in other Bureau publications and are mandated by Section 7(b) of Pub. L. 93–638 (25 U.S.C. 450 *et seq.*). For purposes of awards under the Buy Indian Act, § 1480.403 has been added to these proposed rules.

III. Comments Not Adopted

Certain other comments have been considered but have not been accepted. The following suggestions were not adopted for the reasons given:

(1) Several comments recommended a less-than-100% Indian/Alaska Native ownership of the economic enterprise. A policy decision by the Assistant Secretary—Indian Affairs has maintained the Bureau's position that the economic enterprise shall be owned in its entirety by Indian/Alaska Native(s) person(s).

(2) Some confusion was expressed regarding the term "owned-and-controlled". Bureau policy is continued for ownership in its entirety of the economic enterprise. The authority for and exercise of policy-making implies ownership and control of the economic enterprise. This point is address in § 1480.102.

(3) One comment recommended that Bureau solicitations be sent to all known Indian/Alaska Native companies. Rather, notice of proposed Bureau acquisitions in excess of $10 thousand (with specified exceptions) will be published in the Commerce Business Daily and solicitations will also be sent to appropriate and certified economic enterprises comprising the National Roster of Certified Indian/Alaska Native Economic Enterprises.

(4) The Bureau includes language for an administrative complaint herein to guide the disapproved applicant for certification as well as the reviewing Bureau official. It is not considered appropriate to delete this item and it may be found in §§ 1480.203(f) and .205(c).

IV. Specific Comment Applying to All Parts

The proposed regulations of October 8, 1982 contained the restriction imposed on the Bureau of Indian Affairs by the U.S. Supreme Court decision in *Andrus* v. *Glover Construction co.* (Supreme Court No. 79–48, May 27, 1980). This restriction prohibited the use of the Act authority to contract with Indian/Alaska Native economic enterprises for any type of road construction, repair of buildings, roads, sidewalks, sewers, mains or similar items.

In addition, the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, 96 Stat. 2097) enacted on January 6, 1983 allows the Secretary of the Interior to apply the provisions of the Buy Indian Act (Pub. L. 61–313) and the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act of 1975 (Pub. L. 93–638, 88 Stat. 2205) to all funds administered by the Secretary which are appropriated for the construction and improvement of Indian reservation roads.

Subsequent to the publication of the proposed regulations in the **Federal Register** on October 8, 1982, and the enactment of the Surface Transportation Assistance Act, and prior to this proposed rule, a judicial amendment of injunction pursuant to § 114(b) of Pub. L. 97–424 of January 6, 1983, altered the substance of the rules with respect to the Supreme Court decision in *Andrus* v. *Glover Construction Company.* Essentially, the U.S. District Court for the Eastern District (U.S.D.C.E.D.) of Oklahoma decree of April 6, 1983, lifted the injunction of this court on May 12, 1978, and vacated the injunction on all Indian reservation road construction (as defined in 23 U.S.C. 101), exept within the State of Oklahoma. However, the restriction on the use of Act authority for other construction still remains in effect Bureauwide. This stipulation is found in § 1480.401.

The information collection requirements contained in Sections 1480.302 and .403 regarding compliance with section 7(b) of Pub. L. 93–638 (25 U.S.C. 452) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084–0019. Also, the information collection requirements contained in Section 1480.301 for the Solicitation Mailing List Application (SF–129) has the clearance number 3090–0009. The collection requirement covered by the Qualification Questionnaire is under review for approval by the Office of Management and Budget. Comments addressing these information collection requirements should be submitted to the Office of Management and Budget, 726 Jackson Place, N.W., Washington, D.C. 20504, attention: Interior Desk Officer; and, to the Department of the Interior at the address given above.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations.

The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act. Currently, Indian/Alaska Native economic enterprises apply to the cognizant

Bureau Contract Office to participate under the Act authority. If deemed eligible, said enterprise may respond to and be considered for Bureau solicitation and contracts. These proposed rules serve to formalize an application and certification proicedure for all Bureau procurement activities/locations to be applied uniformly to all economic enterprises seeking to participate under the Act authority. There is no change in the Bureau policy of assessing eligibility of Indian/Alaska Native economic enterprises. The authors of tis document are Donald F. Asbra and Dr. Peter A. Campanelli, Contracting and Grants Administration Staff, Bureau of Indian Affairs, United States Department of the Interior, Washington, D.C. 20245, telephone number (202) 343–5125.

List of Subjects in 48 CFR Part 1480

Indian/Alaska Native economic enterprises, Federal procurement.

A new Part 1480 is proposed to be added to Title 48 of the Code of Federal Regulations to read as follows:

PART 1480—BUY INDIAN ACT; PROCEDURES FOR CONTRACTING WITH INDIANS PURSUANT TO THE ACT OF JUNE 25, 1910

Subpart 1480.1—General Provisions

Sec.

1480.101 Purpose, Scope and Information Collection.
1480.102 Definitions.
1480.103 Statement of Policy.
1480.104 Conformity to Federal Acquisition Regulation.
1480.105 Exceptions by Assistant Secretary—Indian Affairs.

Subpart 1480.2—Bureau Procedures

1480.201 Use of Act Authority and Regulations.
1480.202 Small Purchase Procedures.
1480.203 General Requirements.
1480.204 Certification Process.
1480.205 Receipt of Application.
1480.206 Economic Enterprises Certified Prior to Adoption of These Rules.
1480.207 Subsequent Involvement of Certificate Offeror.
1480.208 Architect-Engineer Services.

Subpart 1480.3—Economic Enterprise Procedures

1480.301 Eligible Offerors/Contractors.
1480.302 Additional Information Required from Economic Enterprises for Response to Bureau Solicitation.
1480.303 Breach of Contract.

Subpart 1480.4—Limitations

1480.401 Construction.
1480.402 Subcontracting.
1480.403 Indian/Alaska Native Preference.

Subpart 1480.5—Clauses and Notices

Sec.

1480.501 Notice of Restriction and Certified Offeror's Response.
1480.502 Subcontracting.

Authority: 25 U.S.C. 47, 36 Stat. 891.

Subpart 1480.1—General Provisions

§ 1480.101 Purpose, Scope and Information Collection.

(a) The regulations in this part provide the policies and procedures for entering into and awardings contracts and purchase orders to certified Indian/Alaska Native economic enterprises by the Bureau of Indian Affairs pursuant to the authority of the Act of June 25, 1910 (Pub. L. 61–313, and referred to as "the Act" or "the Buy Indian Act" throughout this part) and codified as 25 U.S.C. 47 and this part.

(b) The Act provides discretionary authority to the Secretary of the Interior to acquire by purchase the products of Indian industry. This authority is exercised by the Bureau of Indian Affairs on a preferential basis. The Bureau of Indian Affairs may negotiate contracts and purchase orders with certified Indian/Alaska Native economic enterprises to the exclusion of non-Indian offerors pursuant to the authority of section 302(c) (10) and (15) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c) (10) and (15)). This latter authority provides that contracts may be negotiated without formal advertising "if otherwise authorized by law"; in this instance, the authorization to do so is provided under the Act of June 25, 1910. The Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, 96 Stat. 2097), as interpreted by the U.S. District Court for the Eastern District of Oklahoma by decree of April 6, 1983, vacating an injunction against using the Buy Indian Act, is authority also for road construction procurements.

(c) The provisions of this part apply to all acquisitions (purchase orders or contracts) entered into by the Bureau of Indian Affairs with certified Indian/Alaska Native economic enterprises pursuant to the Act and its regulations. However, the Assistant Secretary may authorize exceptions, as noted in § 1480.105 of this part.

(d) Information Collection Requirement: (Reserved.)

§ 1480.102 Definitions.

As used in this part,

"Assistant Secretary" means the Assistant Secretary—Indian Affairs, Department of the Interior.

"Bureau" means the Bureau of Indian Affairs, Department of the Interior.

"Buy Indian Act" means the provisions and authority of the Act of June 25, 1910 (Pub. L. 61–313, 25 U.S.C. 47) and is also referred to as the Act in this part.

"Buy Indian Contract" means any Bureau acquisition (by contract or purchase order) of the product of Indian/Alaska Native industry from a certified Indian/Alaska Native economic enterprise pursuant to the authority of the Act and this part.

"Certified" means the Bureau designation of an Indian/Alaska Native economic enterprise to be included for preferential participation under the Act authority. The certification process includes the submitting of a Standard Form 129 (Solicitation Mailing List Application) and a completed Qualification Questionnaire for Certification to the Bureau by an eligible and interested economic enterprise; meeting the definition requirement for "Indian"; and, satisfying the criterion for ownership-and-control of the economic enterprise.

"Contracting Officer" means an official designated in accordance with 48 CFR Subpart 2.1 with the authority to enter into, administer and/or terminate contracts, and make related Determination and Findings.

"Day" means calendar day.

"Dealer (regular)" means a person who owns, operates or maintains a store, warehouse, or other establishment in which the commodities being supplied are bought, kept in stock, and sold to the public in the usual course of business.

"Indian" means any person or Indian descent who is an enrolled member of an Indian Tribe, as defined herein; or, who is a descendant of one-fourth degree or more Indian blood of an enrolled member of a tribe where rolls have been closed by Act of Congress; or, any Alaska Native of one-fourth degree or more Alaska, Indian, Eskimo, or Aleut blood; or, any member of a Federally recognized tribe; and all persons of one-half degree or more Indian blood.

"Indian/Alaska Native Economic Enterprise" means any profit or nonprofit, commercial, industrial, agricultural, or other lawful business activity that is owned and controlled in its entirety by Indian/Alaska Native(s) or an Indian Tribe.

"Indian Tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, or other organized group or community, including any Alaska Native village, which is recognized by the Secretary of the Interior as having special rights and is recognized as eligible for the services provided by the

United States to Indians because of their status as Indians.

"Owned-and-Controlled" means an Indian/Alaska Native economic enterprise (as defined in this section) which is 100% owned by (an) Indian/Alaska Native person(s). In the case of corporations, all capital stock must be owned by (an) Indian/Alaska Native person(s) and the capital stock issued must represent the substantive evidence of ownership, as determined by the Contracting Officer. In the case of partnerships, all partners must be (an) Indian/Alaska Native person(s). "Controlled" means that (an) Indian/Alaska Native person(s) direct(s) the policy, management and operation of the economic enterprise; hold(s) the key management position(s); and, participate(s) in the economic enterprise on substantially a full-time basis. Exceptions to the "control" requirement may be authorized for tribal government enterprises. To obtain and maintain Bureau certification, an applicant shall meet the "owned-and-controlled" requirement. This requirement shall exist during contract performance if an award is made to the certified economic enterprise.

"Products of Indian/Alaska Native Industry" means any products, goods, supplies or services that can be provided by a certified economic enterprise that either produces them through its own labor, skills or effort, or is a regular dealer in such goods or services.

"Reservation" means any bounded geographical area (including Pueblo lands, former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act, and Indian allotments) established or created by treaty/statute, Executive Order, or as interpreted by court decision and over which an Indian Tribe may exercise jurisdiction.

"Secretary" means the Secretary of the Interior.

"Small Purchase" means an acquisition of supplies, nonpersonal services, and road construction (except in the State of Oklahoma) using the Act authority in the amount of $25,000 or less using the procedures prescribed in this part and as governed by Parts 13 and 15 of this title.

"Tribal Governing Body" means the recognized entity empowered to exercise the governmental authority of a tribe, as defined herein.

§ 1480.103 Statement of Policy.

(a) The Secretary exercises discretionary authority under the Act to acquire by purchase the products of Indian/Alaska Native industry.

(b) The Bureau uses the authority of this Act to the maximum extent practicable to acquire supplies, goods, and services solely from Indian offerors.

(c) The authority of this Act and this part apply to those Bureau acquisitions (small purchase orders or contracts) entered into with certified Indian/Alaska Native economic enterprises.

(d) The authority of this Act and its regulations shall not be used to award self-determination contracts to Tribal organizations (as the term is defined in 25 CFR Part 271) to plan, operate, administer, or manage those Bureau programs or parts thereof that are within the scope of the Indian Self-Determination and Education Assistance Act (25 CFR Parts 271, 272, and 274; and 48 CFR Part 1481), as now or hereafter determined by the Assistant Secretary. However, this Act may be used to cover parts of programs which a Tribe does not wish to contract for and are subject to the provisions of OMB Circular A–76.

(1) Current Buy Indian Act contracts with such Tribal organizations for self-determination activities shall be reviewed. When appropriate, renewal action shall be taken under the authority of Pub. L. 93–638 and its regulations.

(2) Short-term projects related to Tribal government and its business-related functions may continue to be carried out using the award authority of the Buy Indian Act, if so requested by the Tribal governing body.

(e) Bureau personnel shall exercise the authority of the Act and its regulations for all acquisitions governing the procurement of services, goods, and supplies from certified Indian/Alaska Native economic enterprises in meeting Bureau needs and requirements. This requirement applies to all Bureau acquisition actions, regardless of dollar amount, subject to the limitation expressed in § 1480.103(d) and the factors cited in § 1480.201(b).

§ 1480.104 Conformity to Federal Acquisition Regulation.

(a) Purchase orders and contracts entered into by the Bureau pursuant to the Act shall comply with all applicable requirements of the Federal Acquisition Regulation (48 CFR Chapter 1), all provisions of the Interior Acquisition Regulation System (48 CFR Parts 1400–1499), and the governing directives of the Bureau.

(b) After compliance with the provisions of Part 8 of 48 CFR regarding sources of procurement, Bureau Contracting Officers shall determine whether to exercise the authority either under the Act, or under section 8(a) of the Small Business Act, as amended. If it is determined that Act authority will not be used, the exercise of the Small Business 8(a) program authority shall be considered. In addition, the procedures for the purchase/lease of printing equipment and printing work are restricted and governed under Subpart 8.8 of 48 CFR.

(c) Bureau procurement under the Act authority, while limited to certified Indian/Alaska Native economic enterprises, are subject to the rules and related procedures that govern all Federal contracts. That is, once the Bureau decision is made to use the Act authority to purchase supplies or services, the acquisition process that follows shall not be substantively or procedurally different than when dealing with the business community at large. Bureau officials shall adhere to Federal, Interior, and Bureau acquisition regulations and guidelines governing contract planning, advertising, negotiating, pricing, awarding, administering, modifying, terminating, and closing components.

(d) Two basic principles shall be considered by the Contracting Officer:

(1) The Bureau procurement award shall benefit a responsible certified Indian/Alaska Native economic enterprise; and,

(2) A fair and reasonable price shall be assured.

(i) The thorough review of the Qualification Questionnaire for Certification form by a Level IV warranted Contracting Officer shall determine that an economic enterprise fulfills the criteria of these rules; and

(ii) With regard to assurance of a fair and reasonable price, the following steps (as a minimum) are required (as applicable) for contracts entered into under the Act:

(A) Written justification by the Contracting Officer when awarding a noncompetitive (single source) contract;

(B) Properly prepared Bureau cost estimates, including support documentation;

(C) Price analysis; and

(D) Price negotiations, including a written record of the negotiations for the contract file.

(e) When there is more than one certified Indian/Alaska Native economic enterprise interested in a procurement action, and if the requirement is such that the formally advertised method of procurement would be used were the procurement not under the Act, the Contracting Officer shall use the formally advertised method of procurement set forth in Part 14 of this title, restricting competition to certified offerors. The contract shall

then be awarded to the responsible certified contractor submitting the lowest responsive, responsible offer, unless it is determined in accordance with § 14.407–2 and § 15.214 of 48 CFR that such an offer is not reasonable as to price. In such circumstances, the Contracting Officer will notify each responsible certified offeror (which submittted a responsive offer) of the Bureau's intent to negotiate, following the procedures outlined in § 15.214 of 48 CFR.

(f) If the requirement is such that the use of the formally advertised method of procurement is not feasible, the Contracting Officer shall follow the negotiated method of procurement set forth in Part 15 of this title. The competition shall be limited to certified offerors. However, when the proposals received are not technically acceptable and have no reasonable chance of being made so; or, if negotiations with those offerors in the competitive range fail to produce a proposal that is reasonable as to price, the Contracting Officer may terminate negotiations with the certified offerors. The Request for Proposal (RFP) may then be reissued on an unrestricted basis.

§ 1480.105 Exceptions by Assistant Secretary—Indian Affairs.

(a) The Assistant Secretary may authorize individual or class exceptions to the preference authorizations of the Act in meeting Bureau acquisition requirements. Exceptions to the use of the Act's authority include, but are not limited to, the following conditions:

(1) Reasonable quantity, delivery, or other performance schedules cannot be met by a certified economic enterprise; or

(2) The technical quality of the specific goods or services required to meet the end-use of the Bureau activity is not available from a certified economic enterprise; or

(3) The contract price to the Bureau from a certified economic enterprise is considered unreasonable when compared to bureau experience and judgment relative to current market prices; or

(4) Where trade-in considerations make prices from a certified economic enterprise unreasonable; or

(5) An eligible and certified Indian/Alaska Native economic enterprise is not interested, available, or responsible in fulfilling the Bureau's procurement need; or

(6) A management determination is made by the Assistance Secretary to adhere to normal procurement procedures when it is considered in the best interest of the Bureau to do so, regardless of the contract amount.

(b) Under the above circumstances, the Contracting Officer shall prepare a written Determination and Findings that:

(1) There are no interested, eligible, certified, and responsible Indian/Alaska Native economic enterprises available for meeting the acquisition requirements; or

(2) A fair and reasonable price or other acceptable contract terms/provisions cannot be negotiated under the Act; or

(3) A management determination has been exercised by the Assistant Secretary to adhere to normal procurement procedures.

(c) The written Determination and Findings by the Contracting Officer shall be made a part of the contract file. The Assistant Secretary—Indian Affairs shall review/approve each Determination and Findings for a decision on an exception basis for proposed procurement actions in excess of $100,000 except for actions under paragraph (a)(6) above. Normal procurement procedures with non-Indian offerors shall not be taken by the Contracting Officer pending issuance and receipt of a written exception from the Assistant Secretary for proposed action exceeding the threshold dollar amount.

Subpart 1480.2—Bureau Procedures

§ 1480.201 Use of Act Authority and Regulations.

(a) The Bureau shall exercise the authority of the Act and this part in meeting Bureau needs and requirements for the procurement of goods, services and supplies in support of its mission and program activities and as a means of promoting economic development and employment for Indian/Alaska Native persons.

(b) The regulations (under § 1480.102, Indian/Alaska Native Economic Enterprises) authorize Indian Tribes as eligible entities that may be certified under the Act to meet Bureau needs and procurement requirements for supplies, goods and services unrelated to contract awards made under Pub. L. 93–638. Contracting Officers shall exercise special care and attention to maintain this distinction between the intent and use of the two award authorities.

§ 1480.202 Small Purchase Procedures.

Whenever the conditions set forth in Part 13 and Part 15 of this title are met, the simplified method of procurement (small purchase) shall be used. The Contracting Officer shall follow the procedures described in Part 13 of this title.

§ 1480.203 General Requirements.

(a) All proposed Bureau acquisition actions [as excepted in Subpart 5.202 of this title and in § 1480.103(d) of this Part] in excess of $10,000 shall be published by the Contracting Officer as a Synopsis in the U.S. Department of Commerce publication, the Commerce Business Daily, in accordance with 48 CFR Part 5. In addition to the other requirements of a Synopsis, it shall contain the notice cited in § 1480.501(b). When appropriate, the Contracting Officer shall also publish a "Sources Sought" notice in the Commerce Business Daily (as outlined in 48 CFR 5.201 and 5.203).

(b) The Bureau Central Office shall develop, maintain, and periodically distribute a National Roster of Certified Indian/Alaska Native Economic Enterprises. The information for this Roster shall be compiled from applications by eligible offerors on the Solicitation Mailing List Application (SF–129) and on the Qualification Questionnaire for Certification form. The responses shall be reviewed by a Level IV Contracting Officer who shall approve/disapprove the economic enterprise as to certification to participate under the Act authority. When the enterprise is certified by one Bureau Contracting Officer, it shall be reported accordingly to the Bureau Central Office for inclusion in the National Roster, thereby denoting Bureauwide certification as a potential offeror under the Act.

(c) The Bureau shall give preference to Indian/Alaska Native economic enterprises that have submitted a completed SF–129 and Qualification Questionnaire for Certification form to a contracting activity/location and which have been certified by a Contracting Officer as such prior to award for consideration under the Act and this Part.

(d) Review and approval/disapproval of the SF–129 and the certification application is restricted to those personnel certified as a Level IV warranted Contracting Officer (48 CFR 1401.6).

(e) The SF–129 and the Qualification Questionnaire for Certification form shall be available from all Bureau contracting activities/locations. Indian/Alaska Native economic enterprises are encouraged to submit completed SF–129's and Qualification Questionnaires for Certification at any time to the cognizant Bureau facility serving their geographic locality. The Contracting Officer shall determine whether the

offeror is certifiable to contract under the Act. This determination shall be supported by the completed SF–129 and the Qualification Questionnaire for Certification form which shall be on file at the Bureau contracting activity or submitted with (or prior to) the offeror's response to any Bureau solicitation. the Certificate shall be renewed by the certified enterprise every three years on the anniversary of the original certification date in order to maintain a current certificate. If not so renewed, the listing for the economic enterprise shall be removed as a possible offeror from the National Roster by the Bureau Central Office.

(f) An economic enterprise applying for certification under the Act and this Part which is adversely affected by a decision of the cognizant reviewing Contracting Officer may submit an administrative complaint. The complaint procedure is set forth below and shall be made known in writing to the applicant economic enterprise by the reviewing Contracting Officer.

(1) If an economic enterprise is disapproved for certification under the Act by the Contracting Officer, it may submit a written complaint to the cognizant Contracting Officer with a request for review. This document shall be received ten (10) days following the date of delivery by certified mail (return receipt requested) of the Bureau's written notice of disapproval. The reviewing official shall be the Area Director for an Area Office and the Deputy Assistant Secretary—Indian Affairs (Operations) for a Central Office contracting activity. The reviewing official's decision shall be final for the Bureau.

(2) The reviewing official shall request and acquire all relevant documents and other materials necessary to reach and render an administrative decision within thirty (30) days of receipt of the complaint or its supporting documents, whichever is received last.

(g) Each Bureau contracting activity shall compile and maintain a file of current Solicitation Mailing List Applications of Indian/Alaska Native economic enterprises. The submission of a Solicitation Mailing List Application (or, Architect-Engineer and Related Services Questionnaire and Architect-Engineer and Related Services Questionnaire for Specific Projects) by such an economic enterprise does not remove the requirement for it to submit the completed Qualification Questionnaire for Certification form also required by this Part if it wishes to be reviewed for Bureau certification. The Solicitation Mailing List Application (or, Architect-Engineer and Related Serives Questionnaire and Architect-Engineer and Related Services Questionnaire for Specific Projects, when applicable) shall be included in every applicant request to the Bureau for certification.

(h) When a proposed acquistion (regardless of dollar amount) applies to services to be performed in whole or in part on an Indian reservation or Alaska Native village under a Bureau contract and this Act, written notification should be given to the governing body of that entity. Unless unfeasible, this notice should be provided by the Contracting Officer no less than thirty (30) days before the proposed issuance of a solicitation and state the following:

(1) The Bureau intent to contract under the Act authority if there are Indian/Alaska Native economic enterprises which are interested, certified, responsive and responsible;

(2) A synopsis of the proposed contract; and

(3) If there are not interested, certified, responsive and responsible Indian/Alaska Native economic enterprises available, the Bureau requirement will then be obtained by contract pursuant to normal procurement procedure.

§ 1480.204 Certification Process.

(a) The award and preference authority of the Act are used to meet Bureau organizational needs, assist and strengthen the development of Indian/Alaska Native economic enterprises, and enhance their economic self-sufficiency. To achieve these ends, Bureau policy requires certification of eligible offerors whereby adequate proof is provided by the applicant enterprise that it is a legitimate entity to receive awards under the Act.

(1) To be "eligible", the economic enterprise shall meet the definition of Indian/Alaska Native Economic Enterprise in § 1480.102.

(2) To be "qualified" means the eligible economic enterprise has submitted the completed SF–129 and the Qualification Questionnaire and Certification form with required documentation to the Bureau Contracting Officer for review; has received approval as a certified enterprise; is responsible and capable of performing; and, its designation as such appears [or shall appear within ten (10) days of award] on the Bureau's National Roster of Certified Indian/Alaska Native Economic Enterprises.

(b) Bureau approval for certification is provided by a Level IV warranted Contracting Officer (48 CFR 1401.6) or by a reviewing official on appeal; the designation is recognized Bureauwide; and, the certificate is in effect for a three year period unless: (1) Voluntarily surrendered; (2) revoked by the Bureau for cause; (3) the circumstances of the economic enterprise change so that it is no longer eligible or certified; or (4) the original Bureau certification was found to be in error. The option and actions to renew the certificate at the end of a three year period rest entirely with the certified economic enterprise.

(c) The purposes of the certification process are to bring about the use and support of eligible Indian/Alaska Native economic enterprises and to prevent circumvention or abuse of the Act which is detrimental to the legitimate Indian/Alaska Native economic enterprise and contrary to the intent of the Congress. The Bureau Contracting Officer who reviews an applicant's SF–129 and Qualification Questionnaire for Certification form (or, the reviewing official on appeal) shall carefully review and analyze the application to rule out the possibility of fraudulent practice by a non-eligible enterprise. Also, applications from economic enterprises that reflect complex organizational structures should be reviewed by the Office of the Solicitor.

§ 1480.205 Receipt of Application.

(a) The completed application shall be submitted to the reviewing Contracting Officer at the Bureau facility serving the geographic area of the applicant. The Contracting Officer shall formally log the application. Within five (5) days of receipts, the Contracting Officer shall notify the economic enterprise in writing that the application for certification was received, and is under review for certification. Subsequently, if additional information is required for the review, it shall be requested by the Contracting Officer in writing and the twenty (20) day period (see below) shall not take effect until all material has been received.

(b) Within twenty (20) days of receipt of all materials, the Contracting Officer shall notify the economic enterprise in writing that the application for certification has been approved/disapproved. If approved, the applicant's certificate status shall be forwarded to the Bureau Central Office for inclusion in the National Roster of Certified Indian/Alaska Native Economic Enterprise. The certification approval is to be honored by all Bureau contracting activities. A copy of this updated National Roster shall be provided periodically to all Bureau contracting activities by the Bureau Central Office.

(c) If the application for certification is disapproved by the Contracting Officer, the notification of this action shall also

make known the applicant's option of administrative complaint as set forth in § 1480.203(f).

§ 1480.206 Economic Enterprises Certified Prior to Adoption of These Rules.

(a) Indian/Alaska Native economic enterprises holding current Bureau certification on the effective date of this rule shall be notified in writing within thirty (30) days by the cognizant Contracting Officer to submit an updated application to the nearest Bureau Office if it wishes to continue as a certified enterprise. A copy of the pertinent sections of these regulations may be included as part of the Bureau's written notification.

(b) This updated submission by the economic enterprise shall be made to the Bureau within thirty (30) days of the notification date by the Contracting Officer. The certification procedure shall then proceed as stated in this Part. If no updated submission is made within the specified time period, the name of the economic enterprise shall be removed from the National Roster until just time as a new application is received and approved.

§ 1480.207 Subsequent Involvement of Certified Offeror.

(a) In the event an interested and certified Indian/Alaska Native economic enterprise is identified after an unrestricted or open-market solicitation has been issued but prior to date of an award, the Contracting Officer shall provide a copy of the solicitation to such enterprise even though bids, quotations or proposals have been solicited from non-Indian offerors. In such cases, preference under the Act will not be made available to the certified economic enterprise.

(b) Under the above conditions, the Contracting Officer shall determine whether the date for Bureau receipt of bids or proposals shall be extended.

§ 1480.208 Architect-Engineer Services.

When the Bureau procurement requirement for Architect-Engineer Service is restricted to certified offerors pursuant to the Act authority and this Part, all provisions of 48 CFR Part 36 shall apply.

Subpart 1480.3—Economic Enterprise Procedures

§ 1480.301 Eligible Offerors/Contractors.

(a) Any Indian/Alaska Native economic enterprise that meets the requirements of this Part is considered eligible to apply for certification by a Bureau contracting activity. Certification is based on information furnished by the applicant enterprise to the Bureau Contracting Officer on the SF–129 and the Qualification Questionnaire for Certification form prior to award of the contract. Interested applicants should submit their completed forms for review at any time to the Bureau contracting activity serving their geographic locale.

(b) The Bureau shall give preference to Indian/Alaska Native economic enterprises which have been certified by a warranted Level IV Contracting Officer for participation under the Act authority and the provisions of this part.

§ 1480.302 Additional Information Required from Economic Enterprises for Response to Bureau Solicitation.

(a) In response to a specific Bureau solicitation (bid or proposal) for an acquisition under this Part, the economic enterprise shall provide the information required in § 1480.501(c).

§ 1480.303 Breach of Contract.

(a) Failure on the part of the certified contractor to perform the percentage of the contract work its own forces as specified by the Contracting Officer shall be considered as a breach of the contract and grounds for contract termination for default.

(b) Failure on the part of the certified contractor to maintain the economic enterprise as 100% Indian/Alaska Native owned-and-controlled during the contract term under the Act authority and this Part shall be considered as a breach of the contract and grounds for contract termination for default.

(c) Failure on the part of the certified contractor to implement and maintain an approved preference plan under § 1480.403 shall be considered as a breach of the contract and grounds for contract termination for default.

Subpart 1480.4—Limitations

§ 1480.401 Construction.

The authority of this Act and this Part shall not be used to award construction contracts except for road construction contracts. In the State of Oklahoma, the contract authority may not be used for any type construction, including road construction. Road construction in the State of Oklahoma is not permitted unless and until the present injunction (*Glover Construction Co.* v. *Watt, et al., No. 77–178–C, E.D. Oklahoma, April 6, 1983)* is further modified to allow the award of such contracts under the Act.

§ 1480.402 Subcontracting.

(a) All solicitations as well as all legal instruments awarded for services under this Part shall contain the provision limiting the percentage of the contract work that can be subcontracted. Contracts shall not be awarded wherein the total dollar amount will be subcontracted.

(b) The minimum percentage of the work that a certified contractor shall be required to perform with its own employees is as follows:

(1) Architect-Engineer and Other Professional Services—30%.

(2) Road Construction—50%.

(3) Other Services—as determined by Contracting Officer prior to contract award, but never less than 30% unless the Contracting Officer requests and receives an exception from the Assistant Secretary—Indian Affairs to specify a lower percentage.

(c) The costs of supplies, materials, and administration to the prime contractor are not to be included in the above calculations.

(d) When determined by the Contracting Officer, Bureau solicitations for other than services may include a provision requiring the awardee to preform a percentage of the contract work with its own employees. With this requirement, consideration shall be given to the nature of the property or kind of supplies to be furnished under the contract.

§ 1480.403 Indian/Alaska Native Preference.

Any contract or subcontract pursuant to the Act and this Part shall require that all provisions of § 1404.70, § 1452.204–71 and § 1452.204–72 of this title shall be adhered to.

Subpart 1480.5—Clauses and Notices

§ 1480.501 Notice of Restriction and Certified Offeror's Response.

(a) Each solicitation issues under the Part shall contain a notice that the proposed acquisition is restricted to certified Indian/Alaska Native economic enterprises; and, solicitation responses received from other than Indian/Alaska Native economic enterprises shall be considered non-responsive and shall be rejected.

(b) The following clause shall be included with all Bureau solicitations to comply with § 1480.203(a) and this section:

(1) This (Invitation for Bid) (Request for Proposal) is issued under the authority of the Act of June 25, 1910 (The Buy Indian Act, 25 U.S.C. 47). Accordingly, to be considered responsive to this solicitation, the offeror must present written evidence in its (bid) (proposal) that its economic enterprise is 100% owned-and-controlled by Indian(s)/Alaska Native(s). Said enterprise shall have been established prior to (bid) (proposal) opening for this contract. The ownership-and-control

criterion shall be maintained for the contract term if award is made to said enterprise.

(2) (Bids) (Proposals) received from non-Indian offerors shall be considered non-responsive and shall be rejected.

(c) In response to a specific Bureau solicitation (bid or proposal) for an acquisition under this Part, the certified economic enterprise shall also provide the following details in its response document:

(1) Description of the part of the work contemplated being done by its own forces.

(2) Description of the source of human resources (other than management personnel covered above) for the work performed by the economic enterprise.

(3) Description of the method(s) of recruiting and training Indian/Alaska Native employes, indicating the extent of soliciting employment of Indian/Alaska Native persons, as required by Section 7(b) of Pub. L. 93–638 (25 U.S.C. 452 and implemented under 48 CFR 1404.70).

(4) Description of how subcontractors (if any) will be selected in compliance with Section 7(b) of Pub. L. 93–638 (25 U.S.C. 452), and implemented under 48 CFR 1404.70 and § 1480.403 of this Part. Offeror shall furnish the names of Indian/Alaska Native persons or firms being considered for subcontracts (if any); indicate what portion of the work they would be performing; and, provide qualifications of the key personnel that will be assigned to the contract.

§ 1480.502 Subcontracting.

The following clause shall be inserted in Act contracts when required by § 1480.402: The certified contractor shall perform work with its own forces amounting to not less than———* percent of the work, exclusive of the cost of materials, supplies, and administration to the prime contractor. Failure on the part of the certified contractor to submit a subcontracting plan and to perform the designated percentage of the work may be grounds for default termination.

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 84–29880 Filed 11–14–84; 8:45 am]

BILLING CODE 4210–02–M

*Insert the appropriate percentage figure from § 1480.402(b) or as determined by the Contracting Officer based on an exception granted by the Assistant Secretary—Indian Affairs.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1803, 1804, 1805, 1812, 1813, 1814, 1815, 1816, 1817, 1825, 1827, 1831, 1832, 1835, 1842, 1844, 1845, and 1852

Acquisition Regulations; Promulgation of NASA FAR Supplement Directive 84–3

AGENCY: Procurement Policy Division, National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes miscellaneous amendments to the NASA acquisition regulations contained in NASA FAR Supplement Directive (NFSD) 84–3.

EFFECTIVE DATE: Comments are due no later than December 17, 1984.

ADDRESS: Comments should be addressed to: Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, D.C. 20546, Telephone: (202) 453–2118.

SUPPLEMENTARY INFORMATION: NASA FAR Supplement (NFS) amendments incorporated in proposed NFSD 84–3 affect the following acquisition regulatory subjects: Identical Bid Report, Contract Execution, Purchase Order and Related Forms, Contract Clauses, Use and Disclosure of Proposal/Quotation Information, Unsolicited Proposals, Allowable Costs and Funding, Foreign Acquisition, Date of Incurrence of Costs, New Technology Reporting. NASA Participation in Contractors' Purchasing Systems Reviews (CPSR's), Records and Reports of Government Property, Solicitation Provisions and Contract Clauses, Procurement Request Overlay Method, Contract Order of Precedence, Late Submissions, Modifications, and Withdrawals of Proposals, Fixed-Price Incentive Contracts, approval of Option Quantities, Purchases Under the Trade Agreements Act.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. NASA 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.). This rule provides uniformity with other Federal agencies and reduces the administrative impact on bidders as set forth in OFPP Policy Letter 83–2.

List of Subjects in 48 CFR Ch. 18

Government procurement.

Accordingly, it is proposed to amend 48 CFR Ch. 18 as set forth below.

L.E. Hopkins,

Deputy Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Ch. 18 reads as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 1803.303 is amended by adding paragraph (c) to read as follows:

1803.303 Reporting suspected antitrust violations.

* * * * *

(c) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters Code HP. The report shall include the reasons for suspecting collusion.

PART 1804—ADMINISTRATIVE MATTERS

3. Section 1804.103 is revised to read as follow:

1804.103 Contract clause.

See Subpart 1804.72, Review and Approval of Contractual Instruments. When the clause at FAR 52.204–1, Approval of Contract, is used, the Schedule shall provide that the Assistant Administrator for Procurement is the official referred to in the clause.

PART 1805—PUBLICIZING CONTRACT ACTIONS

1805.303–70 [Amended]

4. Section 1805.303–70 is amended by revising the parenthetical material in paragraph (a)(1)(iii) to read "(but see 1815.413)".

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

1812.102 [Amended]

5. The heading of section "1812.102 Contract clauses." is redesignated as "1812.104 Contract clauses." The text of section 1812.102, consisting of paragraphs (a) and (b), is given a new subsection heading reading "1812.104–70 Additional clauses."

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

6. Section 1813.505–3 is added to read as follows:

1813.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.

The $2,500 ceiling for use of the Standard Form 44 at FAR 13.505–3 is raised to $10,000 for purchases of aviation fuel and oil only.

7. Section 1813.7002 is amended by removing the word "or" after paragraph (e), inserting the word "or" after paragraph (f) and adding new paragraph (g) to read as follows:

1813.7002 Limitations on use

* * * * *

(g) The amount of the purchase is over $2,500 (unless the purchase is made under a BPA).

PART 1814—FORMAL ADVERTISING

8. Section 1814.201–3 is added to read as follows:

1814.201–3 Part II—Contract clauses.

Section I, Contract clauses. The contracting officer shall insert in invitations for bids and resulting contracts the clause at 1852.214–70. Contract Order of Precedence, except in those for construction or that do not follow the uniform contract format. The clause may, however, be revised as appropriate and used in contracts for construction or that do not follow the uniform contract format.

PART 1815—CONTRACTING BY NEGOTIATION

9. Section 1815.406–3 is added to read as follow:

1815.406–3 Part II—Contract clauses.

Section I, Contract clauses. The contracting officer shall insert the clause at 1852.215–73, Contract Order of Precedence-Negotiation, in requests for proposals, requests for quotations, and negotiated contracts to which the uniform contract format applies. The clause may, however, be revised as appropriate and used in contracts to which the uniform contract format does not apply.

10. Section 1815.407 is revised to read as follow:

1815.407 Solicitation provisions.

The clause prescribed at FAR 15.407(c)(B) shall not be used in NASA solicitations. See instead 1815.407–70.

11. Section 1815.407–70 is added to read as follow:

1815.407–70 NASA solicitation provisions.

The contracting officer shall insert in requests for proposals and requests for quotations other than for information or planning purposes the provision at 18–52.215–72, Restriction on Use and Disclosure of Proposal/Quotation Information (Data).

12. Section 1815.413 is revised, and 1815.413–2 is added to read as follows:

1815.413 Disclosure and use of information before award.

(a) The alternate procedures at FAR 15.413–2 shall be used for NASA procurements in lieu of those prescribed at FAR 15.413–1. The policies and procedures of FAR 15.413 and 1815.413–2 shall apply after as well as before award. The Notice at FAR 15.413–2(e) shall be placed on the cover sheet of all proposals, whether solicited or unsolicited. (See 1805.303–70(a)(1)(iii) regarding release of the names of firms which submitted bids or proposals.)

(b) During evaluation proceedings, whether or not a Source Evaluation Board is used, NASA personnel participating in any way in evaluating proposals shall not reveal any information concerning the evaluation to anyone who is not also participating in the same evaluation proceedings, and then only to the extent that such information is required in connection with the evaluation. When non-NASA personnel participate in evaluation proceedings, they shall be instructed to observe these restrictions. (Information will be provided to unsuccessful offerors in accordance with FAR 15.1002 and section 1815.1002 of this regulation.)

1815.413–2 Alternate II.

(a) *General.* The references in FAR 15.413–2 to the clause at FAR 52.215–12 shall be considered to be references to the clause at 1852.215–72.

(b) *Policy.* It is NASA policy to have proposals evaluated by the most competent technical and management sources available in NASA and JPL. Proposals may be disclosed to Jet Propulsion Laboratory (JPL) personnel for evaluation purposes; *however,* JPL personnel participating in evaluation proceedings shall be instructed to observe the restrictions in FAR 15.413 and 1815.413. In processing a proposal for evaluation by Board, Committee, or otherwise, NASA may find, in some instances, that it is necessary to disclose a proposal outside the Government to meet its evaluation needs. Such outside evaluation may be made, provided the requirements in paragraphs (c) and (d) below are met.

(c) *Approval.* Under FAR 15.413–2(f)(1), only the Assistant Administrator for Procurement, NASA Headquarters, or designee is authorized to make a decision to disclose a proposal outside the Government or JPL, except that (1) proposals submitted in response to "Announcements of Opportunity" may be disclosed in accordance with NHB 8030.6A and NMI 1156.4F and any amendments thereto and (2) unsolicited proposals may be disclosed with the concurrence of the NASA official one level higher than the NASA program official responsible for overall conduct of the evaluation.

(d) *Agreement with evaluator.* When, in accordance with paragraph (c) above, it is determined to disclose a proposal outside the Government or JPL, the following agreement, or similar appropriate arrangement for the treatment of the proposal, shall be obtained in writing from the evaluator prior to disclosure. Also, the releasing official shall review the proposal to ensure that the Notice at FAR 15.413–2(e) (see 1815.413) is affixed before it is disclosed to the evaluator.

Conditions for Evaluation of Proposals (December 1984)

(a) Whenever NASA furnishes a proposal for evaluation, the recipient agrees to use the information contained in the proposal only for NASA evaluation purposes.

(b) This requirement does not apply to information obtained from another source without restriction.

(c) The NASA Notice on the cover sheet, and any notice which may have been placed on the proposal by its originator shall be applied to any reproduction or abstract. Upon completion of the evaluation, the recipient shall return all copies of the proposal and abstracts, if any, to the NASA office which initially furnished the proposal for evaluation.

(d) Unless authorized by the NASA initiating office, the recipient shall not contact the originator of the proposal concerning any aspect of its contents.

(End of agreement)

13. Section 1815.505 is revised to read as follows:

1815.505 Content of unsolicited proposals.

Proposals for renewal of ongoing projects are generally simple to prepare. However, they should cover the identifying number of the basic contract or other agreement and the items listed at FAR 15.505(a) through (c), particularly as dictated by changes since the original award was made. Prior contact with the NASA technical officer is advisable to determine the optimum amount of technical information to include.

14. Sections 1815.508, 1815.508–70, 1815.509 and 1815.509–70 are added to read as follows:

1815.508 Prohibitions.

FAR 15.508(b) shall not apply to NASA. See instead 1815.508–70.

1815.508–70 NASA prohibitions.

Information (data) contained in unsolicited proposals furnished to the Government is to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with the procedures set forth in, FAR 15.413–2 and 1815.413.

1815.509 Limited use of data.

FAR 15.509 shall not apply to NASA. See instead 1815.509–70.

1815.509–70 Limited use of proposals.

(a) The Government's limited use of proposals does not require that the proposal bear a restrictive notice. Proposers should, however, in order to maximize protection of proposal information that constitutes trade secrets or other information that is commercial or financial and privileged or confidential, place the following notice on the title page and specify the information to be made subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, unsolicited proposal information will be protected to the extent permitted by law, but the Government assumes no liability for use or disclosure of information not made subject to the notice.

Restriction on Use and Disclosure of Proposal Information

The information (data) contained in [——— insert page numbers or other identification] of this proposal constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed other than for evaluation purposes; provided, however, that in the event a contract is awarded on this proposal the Government shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

(End of notice)

(b) If an unsolicited proposal is received with a more restrictive legend than that set forth in paragraph (a) above, the procedures of FAR 15.413–2(c) are to be followed.

(c) Upon receipt, the Government notice prescribed in FAR 15.413–2 (e) shall be placed on the cover sheet of all unsolicited proposals.

(d) Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with, the procedures prescribed in FAR 15.413–2(f) and 1815.413.

(e) In the event of a request under the Freedom of Information Act for any information contained in an unsolicited proposal, the procedures of FAR 15.413–2(g) are to be followed.

PART 1816—TYPES OF CONTRACTS

15. Section 1816.307 is added to read as follows:

1816.307 Contract clauses.

In solicitations and contracts containing the clause at FAR 52.216–8, Fixed Fee, or FAR 52.216–10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.

16. Section 1816.403 is added to read as follows:

1816.403 Fixed-price incentive contracts.

The determination and findings required by FAR 16.403(c) may be signed by the contracting officer for individual purchases and contracts.

PART 1817—SPECIAL CONTRACTING METHODS

17. Section 1817.203 is added to read as follows:

1817.203 Solicitations.

The "authorized person" mentioned in FAR 17.203(g)(2) is hereby designated as being the Procurement Officer.

PART 1825—FOREIGN ACQUISITION

18. Section 1825.102(c) is revised to read as follows:

1825.102 Policy.

* * * * *

(c) Determinations made under 1825.102(a) shall be approved by the Head of the Installation if the contract is estimated to exceed $1,000,000.

19. Section 1825.103(b) is revised to read as follows:

1825.103 Agreements with certain foreign governments.

* * * * *

(b) The procedures in paragraph (a) above do not apply to or affect items—

(1) Listed in FAR 25.108;

(2) Determined to be nonavailable under 1825.102; or

(3) Contracts for basic and applied research in Canada. (See NMI 1362.1.)

1825.401 [Removed]

20. Section 1825.401 is removed.

PART 1827—PATENTS, DATA, AND COPYRIGHTS

21. Section 1827.375–2 is amended by adding before the beginning sentence of paragraph (a) the paragraph designator "(1)" and by adding paragraph (2) to read as follows:

1827.375–2 Follow-up by contractor.

(a) *Contractor procedures.* (1) * * *

(2) In order to ensure that there is adequate understanding of, and commitment to, the reporting requirements of the New Technology clause, prospective contractors under any NASA contract having an estimated cost of $2,500,000 or more (or a lesser dollar amount where deemed appropriate) that contains the clause may be required to submit for approval a detailed plan for New Technology Reporting. (See 1835.003–71.)

* * * * *

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

22. Section 1831.170 is added to read as follows:

1831.170 Contract clauses.

The contracting officer shall insert the clause at 1852.231–71, Date of Incurrence of Costs, in cost-reimbursement contracts for which specific coverage of precontract costs is authorized in accordance with FAR 31.205–32.

PART 1832—CONTRACT FINANCING

23. Section 1832.704 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

1832.704 Limitation of cost or funds.

* * * * *

(b)(1) In contracts that contain the clause at FAR 52.232–22, Limitation of Funds, add the following in the Schedule:

Contract Funding

(a) For purposes of payment of cost, exclusive of fee, pursuant to the Limitation of the Funds clause, the total amount allotted by the Government to this contract is $——— (insert amount of funds presently available for payment of the estimated cost exclusive of fee). The above allotment is for ——— (insert items covered) and covers the following period of performance: ——— (insert applicable period).

(b) An additional amount of $——— (insert amount of funding presently available for payment of fee only) is obligated under this contract for payment of fee.

(End of article)

(2) It is not necessary, although it is not prohibited, to have separate

financial/accounting data for cost and fee. The breakdown is required only in the above schedule article.

(3) When amending the above to increase funding, installations may find it is helpful to show the old amounts, the amount(s) added, and the new totals.

(4) The amount of funds obligated for fee should always be at least sufficient to pay fee anticipated to be earned by the contractor for the work to which the amount allotted for the estimated cost applies.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

24. Section 1835.071 is added to read as follows:

1835.003–71 Plan for New technology reporting.

(a) in conformance with section 305(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(b)), as well as with said section 203(a), it is NASA policy to obtain the prompt reporting of any invention, discovery, improvement, or innovation (i.e., items of new technology, whether or not patentable) made in the performance of NASA contracts for the purpose of providing for the widest practical and appropriate dissemination of the results thereof. The NASA Technology Utilization Program has been established to help carry out this purpose, and the clause at 1852.227–70, New Technology, is included in certain NASA contracts to assure the prompt reporting of such inventions, discoveries, improvements and innovations.

(b) In order to ensure that there is adequate understanding of the requirements for new technology reporting in certain contracts containing the clause at 1852.227–70, New Technology, a contractor may be requested in response to a solicitation for any such contract to (1) provide estimates of cost and manpower requirements to perform new technology reporting, and (2) if selected for negotiation, provide a detailed plan as to how such reporting is to be carried out. (See 1852.235–72, Plan for New Technology Reporting.)

25. Section 1835.070 is amended by adding paragraph (c) to read as follows:

1835.070 NASA contract clauses.

* * * * *

(c) The contracting officer shall insert the provision at 1852.235–72, Plan for New Technology Reporting, in any solicitation for any contract estimated to cost $2,500,000 or more if such contract is also to contain the clause at 1852.227–70, New Technology, unless, in consultation with the installation New Technology Officer, the contracting officer determines that the provision is not appropriate. In addition, the contacting officer may insert the provision in a solicitation for any such contract of a lesser dollar amount if deemed appropriate after consultation with the installation New Technology Officer.

PART 1842—CONTRACT ADMINISTRATION

26. Section 1842.202–71 is amended by revising the last sentence of paragraph (a) to read as follows:

1842.202–71 Delegations to audit offices.

* * * * *

(a) * * * Audit functions include but are not limited to contract cost and price audits, estimating systems surveys, review of accounting systems (see also 1815.871(b)), and appoval of vouchers for provisional payment.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

27. Section 1844.302–70 is amended by revising paragraph (b) to read as follows:

1844.302–70 Contractors' purchasing system reviews conducted by the Department of Defense.

* * * * *

(b) NASA installations desiring to provide full time participants for any DOD CPSR shall forward a request for such participation to the Assistant Administrator for Procurement, Code HP, for approval. Incidental assistance by NASA personnel to DOD personnel who are performing CPSR's for NASA does not require Headquarters approval.

PART 1845—GOVERNMENT PROPERTY

1845.505–6 [Amended]

28. The section heading is amended by removing the word "plant."

1845.505–670 [Amended]

29. Section 1845.505–670(b) is amended by removing the second sentence beginning with the word "Reporting" and ending with the word "change."

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.212–71 [Amended]

30. Section 1852.212–71 is amended by revising the citation "1812.102(b)" to read "1812.104–70(b)."

31. Section 1852.214–70 is added to read as follows:

1852.214–70 Contract order of precedence.

As prescribed in 1814.201–3, insert the following clause:

Contract Order of Precedence (December 1984)

Any inconsistency in this contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) contract clauses; (c) other documents, exhibits, and attachments; and (d) the specifications.

(End of clause)

32. Section 1852.215–12 is added to read as follows:

1852.215–12 Restriction on disclosure and use of data.

As prescribed in 1815.407, this clause shall not be used in NASA solicitations. See instead 1852.215–72.

33. Sections 1852.215–72 and 1852.215–73 are added to read as follows:

1852.215–72 Restriction on use and disclosure of proposal/quotation information (data).

As prescribed in 1815.407–70, insert the following provision in all requests for proposals and requests for quotations other than those for information or planning purposes.

Restriction on Use and Disclosure of Proposal/Quotation Information (Data) (December 1984)

It is NASA policy to use information contained in proposals and quotations for evaluation purposes only. While this policy does not require that the proposal or quotation bear a restrictive notice, offerors or quoters should, in order to maximize protection of trade secrets or other information that is commercial or financial and confidential or privileged, place the following notice on the title page of the proposal or quotation and specify the information, subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, information (data) contained in proposals and quotations will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Restriction on Use and Disclosure of Proposal and Quotation Information (Data)

The information (data) contained in */——— insert page numbers or other identification ———/* of this proposal or quotation constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed for other than evaluation purposes; *provided*, however, that in the event a contract is awarded on the basis of this proposal or quotation the Government shall have the right to use and disclose this

information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

(End of provision)

1852.215-73 Contract order of precedence—negotiation.

As prescribed in 1815.406-3, insert the following clause:

Contract Order of Precedence—Negotiation (December 1984)

Any inconsistency in this contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) contract clauses; (c) other documents, exhibits, and attachments; and (d) the specifications.

(End of clause)

34. Section 1852.216-7 is amended by adding the following sentence at the end of the paragraph:

1852.216-7 Allowable cost and payment.

* * * Paragraph (a) of the clause at FAR 52.216-7 shall be modified as specified in 1852.216-770. If the contract is with a non-profit organization, modify the clause by deleting from paragraph (a) the words "Subpart 31.2" and substituting for them "Subpart 31.7".

35. Section 1852.216-770 is added to read as follows:

1852.216-770 Allowable cost and payment—NASA deviation.

When used in NASA solicitations and contracts, the first sentence of paragraph (a) of the clause at FAR 52.216-7, Allowable Cost and Payment, shall be modified to read: "The Government shall make payments to the Contractor when work progresses, approximately 30 days after receipt of each proper invoice or voucher, in amounts determined to be allowable . . .".

36. Section 1852.231-71 is added to read as follows:

1852.231-71 Date of incurrence of costs.

As prescribed in 1831.170, insert the following clause in cost-reimbursement contracts for which specific coverage of precontract cost is authorized in accordance with FAR 31.205-32.

Date of Incurrence of Costs (December 1984)

The Contractor shall be entitled to reimbursement for costs incurred in an amount not to exceed $——— on or after ——————— which, if incurred after this contract had been entered into, would have been reimbursable under the provisions of this contract.

(End of clause)

37. Section 1852.232-78 is amended by revising the clause date to read "**December 1984**" in place of "**April 1984**" and by adding to the clause paragraph (b)(2)(iv) to read as follows:

1852.232-78 Payment information.

* * * * *

(iv) Recipient Contractor's account number.

38. Section 1852.235-72 is added to read as follows:

1852.235-72 Plan for new technology reporting.

As prescribed in 1835.070(c), the contracting officer shall insert the following provision in any solicitation for any contract estimated to cost $2,500,000 or more if such contract is also to contain the clause at 1852.227-70, New Technology unless, in consultation with the installation New Technology Officer, the contracting officer determines that the provision is not appropriate. The contracting officer may insert the provision in solicitations for such contracts of a lesser dollar amount if deemed appropriate after consultation with the installation New Technology officer.

Plan for New Technology Reporting (December 1984)

The offeror shall, in the proposal in response to this solicitation provide estimates of the cost and manpower requirements to perform the new technology reporting required by the clause at 1852.277-70, New Technology, to be included in any resulting contract. In addition, if selected for negotiation, the Offeror will be required to submit for approval prior to contract execution a detailed plan for New Technology Reporting setting forth the manner in which the offeror will meet the new technology reporting requirements of the New Technology clause. Such plan shall, at a minimum—

(a) Identify the specific areas of technical effort which are considered likely to generate new technology;

(b) Describe the means by which project supervisory and technical personnel will be advised of the responsibilities, details and benefits of new technology reporting;

(c) Describe the procedures to be established, maintained and followed for review of the effort to be undertaken for the purposes of identification and reporting (disclosure) of new technology within the time periods and in the manner prescribed by the New Technology clause;

(d) Describe the procedure for timely submission of the interim and final new technology reports required by the New Technology clause;

(e) Describe the procedures for (1) selecting which of NASA's New Technology clause or other patent rights clause is to be included in each subcontract having as a purpose the conduct of experimental, developmental, research, design, or engineering work, and (2) for providing prompt notification of either the award of such subcontracts or a subcontractor's refusal to accept the clause; and

(f) Idenify the individual(s) assigned substantial and specific responsibilities for ensuring compliance with the requirements of the New Technology clause, as well as their qualifications and organizational placement to discharge these responsibilities.

(End of provision)

[FR Doc. 84-29728 Filed 11-14-84; 8:45 am]

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Notices

Federal Register
Vol. 49, No. 222
Thursday, November 15, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 9, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for AUSDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMN Desk Officer of your intent as early as possible.

Extension

- Farmers Home Administration
7 CFR 1924–C, Planning and Performing Site Development Work
On occasion
FmHA 192–20
State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations; 4,500 responses; 17,244 hours; not applicable under 3504(h)
James Weibel (202) 382–1485

Jane A. Benoit,

Acting Departmental Clearance Officer.

[FR Doc. 84–29955 Filed 11–14–84; 8:45 am]

BILLING CODE 3410–01–M

Soil Conservation Service

Environmental Impact; Troublesome Creek Watershed, MO

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Troublesome Creek Watershed, Knox, Lewis, and Marion Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Paul F. Larson, State Conservationist, Soil Conservationist, Soil Conservation Service, 555 Vandiver Drive, Columbia, Missouri 65202, telephone 314/875–5214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul F. Larson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed protection. The planned works of improvement include 173 small reservoirs, and accelerated financial and technical assistance for land treatment.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contracting Paul F. Larson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects are applicable)

Dated: November 5, 1984.

Paul F. Larson,

State Conservationist.

[FR Doc. 84–29881 Filed 11–14–84; 8:45 am]

BILLING CODE 3410–16–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket Trans–1–84]

Advisory Standards for Chairs Used Primarily for Enplaning and Deplaning Physically Handicapped Passengers; Extension of Deadline for Comment

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of extension of deadline for comments.

SUMMARY: In order to provide ample time for comments from the public, the deadline for submission of comments on advisory standards for chairs used primarily for enplaning and deplaning physically handicapped passengers is extended for an additional 30 days.

DATE: To be assured of consideration, comments must be in writing and must be postmarked on or before December 13, 1984.

ADDRESS: Comments should be sent to: Docket Trans–1–84, 330 C Street, SW., Room 1010, Mail Stop 2101, Washington, D.C. 20202. Comments received will be

available for public inspection Monday through Friday, from 9:00 a.m. to 5:00 p.m., except for legal holidays.

FOR FURTHER INFORMATION CONTACT: For information on technical issues concerning this proposal, contact Mr. Dennis Cannon, Office of Technical Services, (202) 472–2700 (voice or TDD). Information on legal questions should be addressed to Ms. Linda Potter, Office of the General Counsel (202) 245–1801 (voice or TDD). These are not toll free numbers.

For additional copies of the proposal, contact Ms. Michelle Henson, Office of Technical Services, Room 1010, Mail Stop 2101, 330 C Street, SW., Washington, D.C. 20202; (202 472–2700 (voice or TDD). Copies of proposal are also available on tape for those with visual impairments. Tapes may be obtained at the above address or by contacting Ms. Henson.

SUPPLEMENTARY INFORMATION: On September 14, 1984, the Board published an invitation to comment on the development of Advisory Standards for Chairs Used Primarily for Enplaning and Deplaning Handicapped Passengers (49 FR 36210). At its meeting of July 10, 1984, the Board authorized the Chairperson to extend the original comment period up to 30 days, if warranted. To date, the Board has received a number of requests for such an extension, primarily from organizations which wish to distribute the invitation to their members. Since the Board wishes to obtain the broadest input from all interested parties prior to the development of an advisory standard, I am hereby exercising the authority granted to me by vote of the Board.

Dated: November 1, 1984.

Mary Alice Ford,

Chairperson, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 84-30122 Filed 11-14-84; 8:45 am]

BILLING CODE 6820-BP-M

CIVIL AERONAUTICS BOARD

[Order 84-10-118]

Fitness Determination of Air New Jersey, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 84-10-118, Order to Show Cause.

SUMMARY: The Board is proposing to find that Air New Jersey, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and the aircraft used in this service conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than November 23, 1984.

FOR FURTHER INFORMATION CONTACT: Franklin J. McDermott, Bureau of Domestic Aviation, Civil Aeronautics Board, 1925 Connecticut Avenue NW., Washington, D.C. 20428 (202) 673–5105.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–10–118 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–10–118 to that address.

By the Civil Aeronautics Board: October 25, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-30069 Filed 11-14-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket Nos. 42224 and 42254]

Complaint of Frontier Holdings Inc. Against Continential Air Lines, Inc.; Complaint of Western Air Lines, Inc. Against Continential Air lines Inc.; Postponement of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled proceeding which had been scheduled to be held before the undersigned Chief Administrative Law Judge on November 16, 1984, is hereby postponed until November 23, 1984, in Room 1027 in the Universal Building, 1825 Connecticut Ave., NW., Washington, D.C. at 10:00 a.m. (local time).

Dated at Washington, D.C., November 8, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84-30066 Filed 11-14-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 42321]

Hawaii One Corp.; Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on November 14, 1984, at 10:00 a.m. (local time), in Room 1012, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned.

In order to facilitate the conduct of the conference, parties and prospective parties shall, no later than November 13, 1984, submit four copies to the Judge and one copy to each party and prospective party at the office of their counsel in Washington of (1) proposed stipulations; (2) responses to pending requests for information and evidence; (3) proposed requests for additional information and evidence; (4) statements of position; and (5) proposed procedural dates.

Dated at Washington, D.C., November 6, 1984.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 84-30068 Filed 11-14-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 42291]

Royalcoach Airline Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Chief Administrative Law Judge Elias C. Rodriguez. Future communications should be addressed to him.

Dated Washington, D.C., November 9, 1984.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 84-30071 Filed 11-14-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-11-10; Docket No. 42291]

Application of Royalcoach Airline for Certificate Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting Fitness Investigation, Order 84–11–10 Docket 42291.

SUMMARY: The Board is instituting the *Royal Airline Fitness Investigation* to determine if Royalcoach is fit to provide interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file requests for additional evidence and requests to intervene should do so in Docket 42291 by November 19, 1984.

ADDRESSES: Requests for additional evidence and requests to intervene should be filed in Docket 42291 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Juliana M. Winters, Bureau of Domestic

Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–11–10 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84–11–10 to that address.

By the Bureau of Domestic Aviation: November 2, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–30070 Filed 11–14–84; 8:45 am]

BILLING CODE 6320–01–M

[Docket No. 42332]

Tampa-Yucatan Service Case; Postponement of Hearing

Notice is hereby given that the hearing scheduled in the above-entitled proceeding for November 9, 1984, is rescheduled for November 20, 1984, at 10:00 a.m. (local time), Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C. November 7, 1984.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 84–30067 Filed 11–14–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

President's Commission on Industrial Competitiveness

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 December 6, 1984 from 9:00 to 10:30 a.m. the Commission subcommittees will meet at the Sheraton Carlton Hotel, 16th and K Streets, NW., Washington, D.C. for discussion and approval of final reports:

Research and Development—Sheraton Carlton Chesapeake Room
Human Resources—Sheraton Carlton Mount Vernon Room
International Trade—Sheraton Carlton Williamsburg Room
Capital Resources—Sheraton Carlton Williamsburg Room

On December 6, 1984 from 10:45 a.m. to 4:30 p.m. the full Commission will meet in the Sheraton Carlton Mount Vernon Room for discussion and approval of the final Commission report and implementation plan for the Commission recommendations.

On December 7, 1984 from 9:00 a.m. to 4:30 p.m. the full Commission will meet at the Sheraton Carlton Mount Vernon Room to continue discussion and approval of the final Commission report and implementation plan for the Commission recommendations.

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, N.W., Washington, DC 20503, telephone: 202–395–4527.

Date: November 9, 1984.

Egils Milbergs,

Executive Director, President's Commission on Industrial Competitiveness.

[FR Doc. 84–30019 Filed 11–14–84; 8:45 am]

BILLING CODE 3510–13–M

Foreign-Trade Zones Board

[Docket No. 50–84]

Proposed Foreign-Trade Zone—Denver, CO; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City and County of Denver, Colorado, a home-rule municipality, requesting authority to establish a general-purpose foreign-trade zone in Denver, within the Denver customs port of entry. The application was submitted pursuant to the provisons of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 1, 1984. The applicant is authorized to make this proposal under Article 49.5, Title 7 of the Colorado Revised Statutes.

The proposed foreign-trade zone will cover 13 acres within the 280-acre Denver Business Center industrial park, adjacent to Stapleton International Airport, on its east. Development and operation of the zone facility will be handled by the Aspen Group.

The application contains evidence of the need for zone services in the Denver area. A number of firms have indicated an interest in using zone procedures for the warehousing and manipulation of products such as plasma coating equipment, agricultural chemicals, office equipment, pharmaceuticals, luggage, optical equipment, apparel and spices. No specific manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Donald Myhra, District Director, U.S. Customs Service, North Central Region, 600 Central Ave., Great Falls, MT 59401; and Colonel William R. Andrews, Distict Engineer, U.S. Army Engineer District Omaha, USPO & Courthouse, Room 6012, Omaha, NE 68102.

As part of its investigation, the examiners committee will hold a public hearing on December 13, 1984, beginning at 9:00 a.m., in the City Council Chambers, Room 451, the City and County Building, Denver.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by December 4, 1984. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through January 11, 1985.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 119 U.S. Customshouse, 721 19th Street, Denver, CO 80202
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529,

14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: November 8, 1984.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 84-29962 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-429-402]

Postponement of Final Antidumping Duty Determination; Potassium Chloride From the German Democratic Republic

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation that the final determination be postponed until not later than 135 days after the date of publication of the preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that we have determined to postpone our final determination as to whether sales of potassium chloride from the German Democratic Republic have occurred at less than fair value until not later than January 25, 1985.

EFFECTIVE DATE: November 15, 1984.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-4087.

SUPPLEMENTARY INFORMATION: On April 26, 1984, we published a notice in the **Federal Register** (49 FR 18004) that we were initiating, under section 723(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of potassium chloride from the German Democratic Republic were being, or were likely to be, sold at less than fair value. On May 14, 1984, the International Trade Commission determined that there is a reasonable indication that imports of potassium chloride from the German Democratic Republic are materially injuring a U.S. industry. On September 12, 1984, we published a preliminary determination of sales at less than fair value with respect to this merchandise (49 FR 35845). The notice stated that if the investigation proceeded normally, we would make our final determination by November 20, 1984.

On October 17, 1984, counsel for Kali Bergbau, the respondent in this case, requested that we extend the period for the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of its preliminary determination, if an exporter who accounts for a significant portion of the merchandise which is the subject of the investigation requests a postponement after an affirmative preliminary determination. Kali Bergbau is qualified to make such a request since it accounts for the majority of exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue a final determination in this case not later than January 25, 1985.

This notice is published pursuant to section 735(d) of the Act.

Dated: November 8, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-29966 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-461-402]

Postponement of Final Antidumping Duty Determination; Potassium Chloride From the Union of Soviet Socialist Republics

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation that the final determination be postponed until not later than 135 days after the date of publication of the preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that we have determined to postpone our final determination as to whether sales of potassium chloride from the Union of Soviet Socialist Republics have occurred at less than fair value until not later than January 25, 1985.

EFFECTIVE DATE: November 15, 1984.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-4087.

SUPPLEMENTARY INFORMATION: On April 26, 1984, we published a notice in the **Federal Register** (49 FR 18004) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of potassium chloride from the Union of Soviet Socialist Republics were being, or were likely to be, sold at less than fair value. On May 14, 1984, the International Trade Commission determined that there is a reasonable indication that imports of potassium chloride from the Union of Soviet Socialist Republics are materially injuring a U.S. industry. On September 12, 1984, we published a preliminary determination of sales at less than fair value with respect to this merchandise (49 FR 35849). The notice stated that if the investigation proceeded normally, we would make our final determination by November 20, 1984.

On October 17, 1984, counsel for V/O Sojuzpromexport, the respondent in this case, requested that we extend the period for the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of its preliminary determination, if an exporter who accounts for a significant portion of the merchandise which is the subject of the investigation requests a postponement after an affirmative preliminary determination. V/O Sojuzpromexport is qualified to make such a request since it accounts for the majority of exports of the mechandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue a final

determination in this case not later than January 25, 1985.

This notice is published pursuant to section 735(d) of the Act.

Dated: November 8, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-29967 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review; Application

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATES: Comments on these applications must be submitted on or before December 3, 1984.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce,Room 5618, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 84-00034."

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Trade Development, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 48 FR 10596-10604 (Mar. 11, 1983) (codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meet these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937-40 (April 13, 1983).

Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting the application and summarizing the conduct proposed for certification. The OETCA and the applicant have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the application below. Information submitted by any person in connection with the application(s) is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OETCA will consider the information received in determining whether the proposed conduct is "export trade," "export trade activities," or a "method of operation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: Chlor/Alkali Producers International, c/o Dennis Unkovic of Meyer, Unkovic & Scott, 1300 Oliver Building, Pittsburgh PA 15222

Application No.: 84-00034

Date received: October 30, 1984

Date deemed submitted: November 1, 1984

Members in addition to applicant: The B. F. Goodrich Company, Cleveland, Ohio; Kaiser Aluminum and Chemical Corporation, Oakland, California; Occidental Chemical Corporation, Niagara Falls, New York, a subsidiary of Occidental Petroleum Corporation, Los Angeles, California; and Vulcan Materials Company, Birmingham, Alabama.

Summary of the Application

A. Export Markets and Export Trade

Chlor/Alkali and its members intend to export caustic soda and chlorine in their various forms on a worldwide basis.

B. Export Activities and Methods of Operations

Chlor/Alkali and its members seek certification whereby:

1. Chlor/Alkali may enter into agreements with its members wherein (i) Chlor/Alkali agrees to act as the members' exclusive export sales representative for the quantity of caustic soda and chlorine dedicated by each member for export trade in export markets, and (ii) the members may agree that they will export such quantity exclusively through Chlor/Alkali (including a prohibition from exporting independently of Chlor/Alkali either directly or through other export intermediaries) and that they may refuse to deal with other export intermediaries.

2. Chlor/Alkali may, for itself and on behalf of its members, whether by agreement with one or more members, with its distributors or agents in the export markets, with its members' distributors or agents in the export markets, or on the basis of its own determination:

a. Establish export prices at which caustic soda and chlorine will be sold in the export markets,

b. Establish quantities of caustic soda and chlorine to be sold in the export markets,

c. Allocate export markets or customers among the members and their distributors or agents, or among its distributors or agents, and

d. Refuse to quote prices or to market or sell caustic soda and chlorine to its competitors in the export markets or those of its members.

3. Chlor/Alkali may enter into nonexclusive agreements appointing distributors or sales agents in the export markets.

4. Chlor/Alkali and its members may meet from time to time to discuss the following types of information, provided that, in all such meetings of Chlor/Alkali and its members, legal counsel must be present and must maintain an accurate and complete record of all matters discussed at such meetings:

a. Information related to sales and marketing efforts and opportunities in export markets (including without limitation selling strategies, sales, contract and spot market pricing, projected demands for caustic soda and chlorine, customary terms of sale, costs and availability of caustic soda and chlorine of foreign competitors, and specifications for caustic soda and chlorine by customers in the export markets);

b. Information related to the quality and quantity of caustic soda and chlorine available for export by the members (including without limitation inventory levels and geographic availability);

c. Information related to terms and conditions of contracts for export trade to be considered and/to bid on by Chlor/Alkali and its members;

d. Information related to expenses specific to exporting to export markets (including without limitation transportation, insurance, inland freight to port, port storage, commissions, export sales documentation and financing);

e. Information related to U.S. and foreign legislation and regulations affecting sales to export markets; and

f. Information related to results of Chlor/Alkali's operations (including without limitation sales and distribution networks established in export markets).

5. Chlor/Alkali and the members may prescribe the following conditions for withdrawal of members from Chlor/Alkali and for admission of new members:

a. A member may withdraw from Chlor/Alkali as of the last day of any calendar quarter by giving 180 days' prior written notice to the remaining members. The remaining members shall then have the option to terminate the Chlor/Alkali or to pay the withdrawing member the value of its capital account, as adjusted, on the date of termination.

b. Additional members may be admitted to Chlor/Alkali from time to time upon receiving a majority vote of Chlor/Alkali's Management Board, executing a counterpart of the Chlor/Alkali's Joint Venture Agreement and making such capital contribution in cash as is directed by Chlor/Alkali's Management Board.

C. Expedited Review

Chlor/Alkali has requested an expedited review. The Commerce and Justice Departments have granted Chlor/Alkali's request.

The OETCA is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the **Federal Register** identifying the persons submitting an application and summarizing the conduct proposed for certification. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued.

Dated: November 9, 1984.

Irving P. Margulies,

General Counsel.

[FR Doc. 84-30072 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-DR-M

[A-588-401]

Calcium Hypochlorite From Japan; Postponement of Final Antidumping Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from counsel for a respondent in this investigation that the final determination be postponed, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and, that we have determined to postpone our final determination as to whether sales of calcium hypochlorite from Japan have occurred at less than fair value until not later than February 21, 1985.

EFFECTIVE DATE: November 15, 1984.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone (202) 377-1766.

SUPPLEMENTARY INFORMATION: On May 21, 1984, the Department of Commerce published a notice in the **Federal Register** (49 FR 21390) that it was initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping investigation to determine whether calcium hypochlorite from Japan was being, or was likely to be, sold at less than fair value. On October 9, 1984, we published a preliminary determination of sales at less than fair value with respect to this merchandise (49 FR 39590). The notice stated that if this investigation proceeded normally we would make our final determination by December 12, 1984.

On October 18, 1984, counsel for a respondent, Nippon Soda Co., Ltd., requested that we extend the period for the final determination until February 21, 1985, 135 days after the date of publication of the preliminary determinations, in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published notice of its preliminary determination, if exporters who account for a significant proportion of exports of the merchandise request an extension after an affirmative preliminary determination. Nippon Soda Co., Ltd. is qualified to make such a request since it accounts for the majority of exports of the merchandise under investigation. If an exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request.

Accordingly, the Department will issue a final determination in this case not later than February 21, 1985. The date of the public hearing has also been changed to November 29, 1984, at 10:00 AM in room 1851 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., 20230.

This notice is published pursuant to section 735(d) of the Act.

Dated: November 8, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-30001 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

DEPARTMENT OF LABOR

Steel Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (1976), as amended, notice is hereby given that the Steel Advisory Committee will hold a meeting on November 28, 1984 at 2:00 p.m.–3:00 p.m. The meeting will be held in Room 4830, U.S. Department of Commerce, Herbert Hoover Building, 14th Street & Constitution Avenue, NW., Washington, D.C. The Committee, consisting of 24 members appointed, jointly, by the Secretaries of Commerce and Labor from among management and organized labor of the domestic steel production industry as well as government was established [48 FR 51165 (1983)] as a co-departmental advisory committee on November 3, 1983 to address common problems affecting the domestic steel production industry and make consensus recommendations to the Cabinet Council on Commerce and Trade. The Secretaries of Commerce and Labor serve as Co-chair of the Committee.

The purpose of this meeting is to present consensus findings and recommendations developed by Subcommittees of the Steel Advisory Committee. The Committee will review, solicit public comment on, and if in concurrence, forward these findings and recommendations to the Cabinet Council on Commerce and Trade for action.

For further information regarding the Committee's agenda, meeting schedule, objectives or structure, please contact Dr. Timothy P. Roth, Executive Director, Steel Advisory Committee, whose mailing address is: Room 6324, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; or phone (202) 377–0703. With regard to general questions relating to the administration of this Committee as required by the Federal Advisory Committee Act, please contact Robert H. Brumley, II, Special Assistant to the General Counsel, U.S. Department of Commerce, (202) 377–4772.

The public is welcome to attend this meeting and will be admitted to the extent that seating is available. Persons wishing to make formal statements should nofity the Executive Director of the Committee in advance of this meeting. The Committee Chair retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Dated: November 9, 1984.

Timothy P. Roth,

Executive Director, Steel Advisory Committee.

[FR Doc. 84-30006 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-BP-M; 4510-23-M

DEPARTMENT OF COMMERCE

International Trade Administration

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on November 29, 1984, 10:00 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel aggrements.)

General Session: 10:00–10:45 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 10:45–11:30a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR 166 (1982)) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility Room 4104, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: November 14, 1984.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 84-30219 Filed 11-14-84; 12:08 pm]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraints Limit for Certain Cotton Apparel Exported From India

November 9, 1984.

On September 11, 1984 a notice was published in the **Federal Register** (49 FR 35681) announcing that, on July 31, 1984, the United States Government, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, had requested the Government of India to enter into consultations concerning exports to the United States of cotton vests in Category 359pt. (only TSUSA numbers 379.0270, 379.0654, 379.3950, 379,5700, 379.5820, 383.0628, 383.4200 and 383.4320), produced or manufactured in India.

No agreement has been reached on a mutually satisfactory solution in consultations. The United States Government had decided, therefore, until such time as a different solution is agreed, to control imports of cotton vests in Category 359pt. at the prorated twelve-month limit of 306,489 dozen for Category 359pt., exported during the priod which began on July 31, 1984 and extends through December 31, 1984.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for comsumption, or withdrawal from warehouse for consumption, of cotton apparel products in Category 359pt., exported during the designated period.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton apparel products in Category 359pt., exported during the designated period.

Effective Date: November 21, 1984.

For Further Information Contact: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S.

Department of Commerce, Washington, DC (202/377–4212).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

November 9, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, between the Governments of the United States and India; and in accordance with the provisions of executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 21, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 359pt.,[1] produced or manufactured in India and exported during the indicated period, in excess of the following limits:

Category	Prorated 12-Month Limit [2]	Period
359pt.[1]	306,489 pounds	July 31, 1984–Dec. 31, 1984.

[1] In Category 359, only TSUSA numbers 379.0270, 379.0654, 379.3950, 379.5700, 379.5820, 383.0628, 383.4200 and 383.4320.
[2] The limit has not been adjusted to reflect any imports exported after July 30, 1984.

Textile products in Category 359pt.[1] which have been exported to the United States during the ninety-day period which began on July 31, 1984 and extended through October 28, 1984, shall be subject to this directive.

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).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

[1] In Category 359, only TSUSA numbers 379.0270, 379.0654, 379.3950, 379.5700, 379.5820, 383.0628, 383.4200 and 383.4320.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–30002 Filed 11–14–84; 8:45 am]
BILLING CODE 3510–DR–M

Request for Public Comment on Bilateral Textile Consultations With the Government of the Republic of Indonesia To Review Trade in Category 640

November 9, 1984.

On October 31, 1984 the Government of the United States again requested consultations with the Government of the Republic of Indonesia with respect to woven shirts of man-made fibers in Category 640. This request was made on the basis of the agreement, as amended, between the Governments of the United States and Republic of Indonesia relating to trade in Cotton, Wool, and Man-Made Fiber Textiles and Textile Products of October 13 and November 9, 1982.

The purpose of this notice is to advise the public that the previous call for consultations concerning this category and the control limit established for it during the twelve-month period which began on July 1, 1984 (See 49 FR 34391) are being cancelled and a new request for consultations and a new 90-day control period are being established based on the more recent call date of October 31, 1984. If no solution is agreed upon in consultations between the governments, CITA, pursuant to the agreement, as amended, may establish a prorated specific limit of 166,075 dozen for the entry and withdrawal from warehouse for consumption of textile products in Category 640, produced or manufactured in Indonesia and exported during the period which began on October 31, 1984 and extends through the end of the agreement year, June 30, 1985. The limit may be adjusted to include prorated swing and carryforward.

The Government of the United States has decided, pending agreement on a mutually satisfactory solution, to control imports in this category during the 90-day consultation period (October 31-January 27, 1985) at 72,840 dozen. In the event the limit established for the ninety-day period is exceeded, such excess amount, if allowed to enter, may be charged to the limit for the period which began on October 31, 1984 and extends through June 30, 1985. A summary market statement for this category follows this notice.

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).

Anyone wishing to comment or provide data or information regarding the treatment of Category 640 under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of the Republic of Indonesia, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Effective Date: November 21, 1984.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Indonesia—Market Statement

Category 640—Men's and Boys' Woven Man-made Fiber Shirts and Blouses

October 1984.

Category 640 imports from Indonesia nearly tripled in the year ending August to 258,646 dozen. Imports during January–August to 226,612 dozen, were two times greater that the total amount of Category 640 imported from Indonesia in 1983. August 1984 imports alone, at 63,755 dozen, equaled 54 percent of the 1983 total. This is a sharp and substantial increase in imports in a sector severely affected by imports.

Imports from all sources increased 11 percent during 1979–83 while U.S. production declined 24 percent. This resulted in a market share loss for U.S. producers and an increase in the import to production ratio. In 1983, U.S. production was 10,217,000 dozen; imports were 10,770,000 dozen; and the ratio reached 105.4 percent. Imports have continued to increase into 1984 with year ending August 1984 imports at 12,985,575 dozen, 30 percent higher than during the previous twelve months.

November 9, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive cancels and supersedes that portion of the directive of August 27, 1984, which established a limit of 182,698 dozen for man-made fiber textile products in Category 640, exported during the period which began on July 1, 1984 and extends through June 30, 1984.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 21, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 640, produced or manufactured in Indonesia and exported during the ninety-day period which began on October 31, 1984 and extends through January 27, 1985, in excess of 72,840 dozen.[1]

Merchandise in Category 640, which has been exported before October 31, 1984 shall not be subject to this directive.

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 Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

[1] The limit has not been adjusted to reflect any imports exported after October 31, 1984.

Sincerely,
Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-30005 Filed 11-14-84; 8:45 am]
BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of the Republic of Indonesia To Review Trade in Category 369pt. (Shop Towels)

November 9, 1984.

On October 30, 1984 the Government of the United States requested consultations with the Government of the Republic of Indonesia with respect to shop towels in Category 369pt. (only TSUSA 366.2740). This request was made on the basis of the agreeement, as amended, between the Governments of the United States and Republic of Indonesia relating to trade in Cotton, Wool and Man-Made Fiber Textiles and Textile Products of October 13 and November 9, 1982.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the governments, CITA, pursuant to the agreement, as amended, may establish a prorated specific limit of 432,348 pounds for the entry and withdrawal from warehouse for consumption of textile products in Category 369pt., produced or manufactured in Indonesia and exported to the United States during the period which began on October 30, 1984 and extends through the end of the agreement year, June 30, 1985. The limit may be adjusted to include prorated swing and carryforward.

The Government of the United States has decided, pending agreement on a mutually satisfactory solution, to control imports in this category during the 90-day consultation period (October 30-January 28, 1985) at a level of 188,775 pounds. In the event the limit established for the ninety-day period is exceeded, such excess amount, if allowed to enter, may be charged to the level established during the period which began on Ocboter 30, 1984 and extends through June 30, 1985.

A summary market statement for this category follows this notice.

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).

Anyone wishing to comment or provide data or information regarding the treatment of Category 369pt. under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of the Republic of Indonesia, or on any other aspect thereof , or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is nto yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreeemnt or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Effective Date: November 21, 1984.

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Indonesia—Market Statement

Category 369pt.—Cotton Shop Towels

October 1984.

Domestic consumption of shop towels has been severely depressed since 1981. Production plus imports of shop towels declined by 19 percent from 1981 to 1983. The number of production workers engaged in the production of shop towels declined by 19 percent from 1981 to 1983. The number of production workers engaged in the production of shop towels declined 29 percent from 1981 to 1983; man-hours worked declined 34 percent. Capacity utilization in the shop towel industry decreased from 40.8 percent in 1981 to 33.6 percent in 1983. In spite of domestic production increasing slightly at 2 percent in 1983, it is still 20 percent below the level of 1981.

Imports during the first eight months of 1984 reached 8,396,000 pounds, up 102 percent from the same period in 1983. Imports during

January-August 1984 were almost as high as the record set in all of 1981 when 8,511,000 pounds were imported. The import to production ratio reached 151.6 percent during the first two months of 1984; almost twice the ratio of 1981–1983.

U.S. imports of Category 369pt.—Cotton Shop Towels from Indonesia during the year ending August 1984 were 630,117 pounds, more than six times the 94,077 pounds imported a year earlier. Imports in 369 pt. the first eight months of 1984 were 422,675 pounds above the amount imported from Indonesia during the same period in 1983. This is a sharp and substantial increase of imports in a sector already adversely affected by imports.

November 9, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 21, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 369pt.,[1] produced or manufactured in Indonesia and exported during the ninety-day period which began on October 30, 1984 and extends through January 28, 1985, in excess of 188,775 pounds.[2]

Textile products in Category 369pt. which have been exported to the United States prior to October 30, 1984 shall not be subject to this directive.

Textile products in Category 369pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

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 (40 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions falls 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. 84-30003 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 369, only TSUSA number 366.2740.

[2] The level has not been adjusted to reflect any imports exported after October 29, 1984.

Requesting Public Comments on Bilateral Textile Consultations With Mauritius on Men's and Boys' Woven Cotton Shirts in Category 340

November 9, 1984.

On October 31, 1984, the United States Government, under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Government of Mauritius to enter into consultations concerning exports to the United States of men's and boys' woven cotton shirts in Category 340, produced or manufactured in Mauritius.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Mauritius, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton textile products in Category 340, produced or manufactured in Mauritius and exported to the United States during the twelve-month period which began on October 31, 1984 and extends through October 30, 1985 at a level of 100,756 dozen.

Anyone wishing to comment or provide data or information regarding the treatment of Category 340 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Mauritius—Market Statement

October 1984.

Category 340—Men's and Boys' Woven Cotton Shirts

The substantial growth in imports from Mauritius is disrupting the market for Category 340 in the United States.

U.S. production of Category 340 declined sharply from 1972 through 1982, dropping from 11.1 million dozen to 4.3 million dozen. Production in 1983 partially recovered from the depressed levels of 1981 and 1982 but remained below any other years on record.

Imports of Category 340 more than doubled from 1972 to 1983, increasing from 3.5 million dozen to 7.1 million dozen. The growth continued in 1984 when imports for the first eight months were 6.1 million dozen, up 32.6 percent from the same period in 1983.

The ratio of imports to domestic production increased from 32 percent in 1972 to 150 percent in 1983. The ratio will be higher in 1984 and will exceed the record level of 180 percent reached in 1982 if imports continue at the January-August 1984 levels.

U.S. imports in Category 340 from Mauritius totaled 115,199 dozen in the twelve months ending August 1984, a 9,207% increase over the same period of 1983.

[FR Doc. 84-30004 Filed 11-14-84; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, D.C. 20503, (202) 395–7231. Copies of the submission are available from Joseph Salazar, Agency Clearance Officer, (202) 254–9735.

Title: Futures Volume, Open Interest, Prices, Deliveries, and Exchanges of Futures for Physicals.

Form Number: Not applicable
Action: Extension
Respondents: Businesses (excluding small businesses)
Estimated Annual Burden: 605
Estimated Number of Respondents: 11

Issued in Washington, D.C., on November 8, 1984.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29885 Filed 11-14-84; 8:45 am]

BILLING CODE 6351-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

ADDRESS: Persons wishing to comment on this information collection should contact Kate Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, D.C. 20503, (202) 395-7231. Copies of the submission are available from Joseph Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Hedging Exemptions
Form Number: Not applicable
Action: Extension
Respondents: Businesses (excluding small businesses)
Estimated Annual Burden: 60
Estimated Number of Respondents: 20

Issued in Washington, D.C., on November 8, 1984.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29886 Filed 11-14-84; 8:45 am]

BILLING CODE 6351-01-M

Contract Market Proposals; Chicago Board of Trade, Exchange Proposal to Trade Commodity Options; Long-Term U.S. Treasury Notes

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions for the application of the Chicago Board of Trade for trading commodity options on long-term U.S. Treasury note futures contracts.

SUMMARY: The Chicago Board of Trade ("CBT") has submitted an application to trade options on long-term U.S. Treasury note futures contracts under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"). The Commission believes that public comment on the proposal is in the public interest and is consistent with its option regulations and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before December 17, 1984.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Acting Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CBT U.S. Treasury note option contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: The Commission has previously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts are permitted to be traded on domestic boards of trade designated by the Commission as contract markets for options trading (46 FR 54500 (November 3, 1981)). Initially, the pilot program provided that each board of trade would be approved for trading in no more than one futures option contract. These regulations were subsequently amended to permit domestic boards of trade to be designated as contract markets for up to five options on certain futures contracts (49 FR 3364 (August 24, 1984)).[1] The CBT has been designated as a contract market in options on U.S. Treasury bond futures contracts. In addition, the CBT previously submitted to the Commission an application to trade commodity options on silver futures contracts (49 FR 39094 (October 3, 1984)).

CBT has applied for contract market designation, pursuant to Section 4c(c) of the Commodity Exchange Act, 7 U.S.C. 6c(c) (1982), ("Act") and Commission Regulation § 33.5, to trade options on long-term U.S. Treasury note futures contracts.

A copy of the terms and conditions of the proposed CBT option on long-term U.S. Teasury note futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of these materials can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by CBT in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies for such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed option contract, or with respect to other materials submitted by CBT in support of its application, should send such comments to Jean A. Webb, Acting Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by December 17, 1984.

Issued in Washington, D.C. on November 8, 1984

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29888 Filed 11-14-84; 8:45 am]

BILLING CODE 6351-01-M

[1] In addition, the Commission has amended its regulations to permit each board of trade to be designated in up to two options on domestic agricultural futures contracts in addition to the five permissible option designations noted above (49 FR 2752 (January 23, 1984)). The Chicago Board of Trade has been designated as a contract market for options on soybean futures contracts. In addition, the CBT currently has pending before the Commission an application to trade commodity options on corn futures contracts (49 FR 26129 (June 26, 1984)).

Contract Market Proposals; Chicago Mercantile Exchange; Exchange Proposal to Trade Commodity Options; British Pound and Swiss Franc

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions for the applications of the Chicago Mercantile Exchange for trading commodity options on the British pound futures contract, the Swiss franc futures contract and the three-month Eurodollar futures contract.

SUMMARY: The Chicago Mercantile Exchange ("CME") has submitted applications to trade options on the British pound futures contract, the Swiss franc futures contract and the three-month Eurodollar futures contract under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"). The Commission believes that public

comment on the proposals is in the public interest and is consistent with its option regulations and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before December 17, 1984.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Acting Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CME British pound, Swiss franc and Eurodollar option contracts.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254–7227.

SUPPLEMENTARY INFORMATION: The Commission has previously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts are permitted to be traded on domestic boards of trade designated by the Commission as contract markets for options trading (46 FR 54500 (November 3, 1981)). Initially, the pilot program provided that each board of trade would be approved for trading in no more than one futures option contract. These regulations were subsequently amended to permit domestic boards of trade to be designated as contract markets for up to five options on certain futures contracts (49 FR 33641 (August 24, 1984)).[1] The CME has been designated by the Commission as a contract market for options on the Standard & Poor's 500 Stock Price Index futures contract and as a contract market for options on the Deutschemark futures contract.

CME has applied for contract market designation, pursuant to Section 4c(c) of the Commodity Exchange Act, 7 U.S.C. 6c(c) (1982), ("Act") and Commission Regulation § 33.5, to trade options on the British pound futures contract, the Swiss franc futures contract and the three-month Eurodollar futures contract.

A copy of the terms and conditions of the proposed CME option contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of these materials can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by CME in support of its applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed option contracts, or with respect to other materials submitted by CME in support of its applications, should send such comments to Jean A. Webb, Acting Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by December 17, 1984.

Issued in Washington, D.C. on November 8, 1984.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29887 Filed 11-14-84; 8:45 am]

BILLING CODE 6351-01-M

[1] In addition, the Commission has amended its regulations to permit each board of trade to be designated in up to two options on domestic agricultural futures contracts in addition to the five permissible designations noted above (49 FR 2752 (January 23, 1984)). The Chicago Mercantile Exchange has been designated as a contract market for options on live cattle futures contracts. In addition, the CME currently has pending before the Commission an application to trade commodity options on live hog futures contracts (49 FR 26129 (June 26, 1984)).

Contract Market Proposals; Philadelphia Board of Trade; Exchange Proposal to Trade Commodity Options; Three-Month Eurodollar Time Deposits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions and trading procedures for the application of the Philadelphia Board of Trade, Inc. for trading and commodity options on three-month Eurodollar time deposits.

SUMMARY: The Philadelphia Board of Trade ("PHBT") has submitted an application to trade options on three-month Eurodollar time deposits under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"). The Commission believes that public comment on the proposal is in the public interest and is consistent with its option regulations and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before December 31, 1984.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Acting Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the PHBT Eurodollar option contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254–7227.

SUPPLEMENTARY INFORMATION: The Commission has previsously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts are permitted to be traded on domestic boards of trade designated by the Commission as contract markets for options trading (46 FR 54500 (November 3, 1981)). Initially, the pilot program provided that each board of trade would be approved for trading in no more than one futures option contract. These regulations were subsequently amended to permit domestic boards of trade to be designated as constract markets for up to five options on futures contracts or physical commodities, of which no more than two contracts may involve an option on a physical commodity (49 FR 33641 (August 24, 1984)).[1]

The PHBT has applied for contract market designation, pursuant to Section 4c(c) of the Commodity Exchange Act, 7 U.S.C. 6c(c) (1982), ("Act") and Commission Regulation § 33.5, to trade options on three-month Eurodollar time deposits. Under the rules of the proposed option contract, a Eurodollar option could be exercised only on its expiration date ("European" option) and would be settled in cash. The cash settlement of an option would be based on a final settlement price which represents 100 minus the rate for three-month Eurodollar time deposit funds on the last day of trading, as determined by the PHBT through surveys of major banks in the interbank Eurodollar market.

In addition, the Eurodollar option contract would be traded under proposed rules which provide for a registered board broker. Among other duties, the board broker would maintain a book of market orders and limit orders left with such broker and would be responsible for execution of those orders. The board broker also would have the responsibilities of "montoring

[1] In addition, the Commission has amended its regulations to permit each board of trade to be designated in up to two options on domestic agriuclutral futures contracts in addition to the five permissible option designations noted above (49 FR 2752 (January 23, 1984)).

the market" and "maintaining orderliness in the trading crowd." The proposed trading rules also provide that, at an opening, all market orders (whether left with the board broker or represented by a floor member in the trading crowd) shall be excuted at one price.

The Commission is seeking public comment on the terms and conditions of the proposed Eurodollar option contract, including the PHBT's proposed exercise and cash settlement provisions. The Commission also requests comment on the proposed trading rules for the Eurodollar option contract. In particular, comments on the proposed board broker system of trading and the one-price opening procedure would be useful to the Commission in evaluating the proposal.

A copy of the terms and conditions of the proposed PHBT Option on three-month Eurodollar time deposits will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of these materials can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by PHBT in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed option contract, or with respect to other materials submitted by PHBT in support of its application, should send such comments to Jean A. Webb, Acting Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by December 31, 1984.

Issued in Washington, D.C. on November 8, 1984.

Jean A. Webb,

Acting Secretary of the Commission.

[FR Doc. 84-29889 Filed 11-14-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Record Notice

AGENCY: Office of the Secretary, Defense.

ACTION: Notice of an altered system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter an existing system of record subject to the Privacy Act of 1974. It is identified as DGC 04, entitled: "Industrial Personnel Security Clearance Case Files" last published on June 6, 1983 at 48 FR 25829. The major alteration is converting the system from a manual to a hybrid system, i.e., part manual and part automated. The record system notice, as altered, is set forth below.

DATES: This system shall be effective without further notice December 17, 1984, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the System Manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Norma Cook, Privacy Act Officer, ODASD(A), Room 5C-315, Pentagon, Washington, DC 20301-1155, Telephone: 202/695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense (OSD) systems of records notices as prescribed by the Privacy Act of 1974, Title 5, United States Code Section 552a (Pub. L. 93-579; 44 Stat. 1896. *et seq.*) have been published in the **Federal Register** at:

FR Doc. 83-12048 (48 FR 25827) June 6, 1983
FR Doc. 84-4418 (49 FR 6145) February 17, 1984
FR Doc. 84-17736 (49 FR 27602) July 5, 1984
FR Doc. 84-20096 (49 FR 30560) July 31, 1984
FR Doc. 84-22569 (49 FR 33700) August 24, 1984
FR Doc. 24410 (49 FR 36133) September 14, 1984
FR Doc. 84-25835 (49 FR 38328) September 28, 1984
FR Doc. 84-26325 (49 FR 39185) October 4, 1984

This proposed altered system is within the purview of the provisions of 5 U.S.C. 552a(o) of the Privacy Act which requires the submission of an altered system report. A report was submitted on October 12, 1984.

Norma L. Cook,

Acting OSD Federal Register Liaison Officer, Department of Defense.

November 8, 1984.

DGC 04

SYSTEM NAME:

Industrial Personnel Security Clearance Case Files.

SYSTEM LOCATION:

Directorate for Industrial Security Clearance Review (DISCR), Defense Legal Service Agency (DLSA) Department of Defense (DoD), 4019 Wilson Blvd., Suite 101, Arlington, VA 22203-1995. Decentralized inactive segments at the Washington National Records Center, and at the U.S. Army Investigative Records Depository, Fort Meade, Maryland 20755. Automated records are maintained on a system V5-02, Defense Investigative Service, Personnel Investigations Center, Baltimore, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government contractor employees, and former employees whose industrial security clearance cases were referred to DISCR for adjudication under Executive Order 10865 as implemented by DoD Directive 5220.6 by the Defense Industrial Security Clearance Office (DISCO) or by the Director Defense Investigative Service (DIS).

CATEGORIES OF RECORDS IN THE SYSTEM:

System includes, automated case status records for current cases and inactive case and an alphabetical card index file for records of cases prior to 1984 used for recording actions taken and for identification and location of case files within the system; individual case files which include requests for investigation and clearances, general correspondence relating to case, personnel security questionnaires, investigative reports prepared by various investigative agencies, medical and psychiatric records and evaluations DISCO referral recommendation, correspondence between the individual and DISCR elements, DISCO, medical facilities, DoD Psychiatric Consultants, investigative agencies, other DoD and Federal agencies, Screening Board, Examiners and the Appeal Board, attorneys, elements of the office of the Secretary of Defense and Defense Investigative Service, written interrogatories and Statement of Reasons (SOR) to individuals, with replies, recommendations, summaries,

records of adjudicative actions, transcript of hearings and exhibits. Supplementing the system's case files are redacted copies of DISCR administrative and adjudicative decisions form July 1961 to date. Names and identifying information of applicant's, witnesses, source of information, etc., are deleted from these redacted record's to protect the privacy of persons involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10865, "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended by Executive Order 10909, dated January 17, 1961, DoD Directive 5220.6, "Industrial Personnel Security Clearance Program" dated December 20, 1976, DoD Regulation 5200–2R "DoD Personnel Security Program".

PURPOSE(S):

These records are collected and maintained to determine whether the granting or retention of security clearance to industrial contractor personnel is clearly consistent with the national interest, to record clearance adjudicative actions and determinations; to record processing steps taken and processing time; to prepare statistical listings and summaries; to document due process actions taken; to assist authorized DoD Consulting Psychiatrist to compile evaluations and reports; to respond to inquires from Presidential Staff offices when the inquiry is made at the request of the individual; to monitor and control adjudicative actions and processes. Automated case status system and card files are used to record statistics, provide location and status and internal identification of cases, to prepare listings and statistical reports and summaries, and to monitor work flow and actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Justice in determining claims for reimbursement in preparation of hearings, appeals and Federal Court review. Also see DoD blanket routine uses at the beginning of DoD listing of system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders, and on vertical file cards; automated records in electronic storage are maintained on magnetic tapes and discs at Defense Investigative Service, Personnel Investigations Center, Baltimore, MD.

RETRIEVABILITY:

Filed alphabetically by name or by case number. Access to computer data may be made by Name and SSAN and a combination of name and other personnel identifying data.

SAFEGUARDS:

Files folders and cards are stored in safes or locked file containers locked in a limited access area, and are accessible only to DISCR authorized, personnel. All records are stored, processed, transmitted and protected as the equivalent of classified information. Records are accessed by the custodian of the record system and by persons responsible for servicing the system, who are properly screened and cleared for need-to-know.

Computer hardware is located in locked areas controlled and guarded, with access limited to authorized personnel. Computer access is via dedicated data circuits which prevent access from standard dial-up telephones and is individually password controlled. Individual passwords are changed quarterly or are changed upon departure of personnel.

The automated system is operated by Defense Investigative Service, Personnel Investigations Center, Information Systems Division. Only DISCR personnel with an official need-to-know are given individual passwords and user identification information needed to access the computer system and amend, add, alter, change or delete DISCR records. Other authorized contributors and users of the Defense Central Index of Investigations are authorized read-only access to DISCR case status records in that system.

RETENTION AND DISPOSAL:

Completed case files are retained in office files for two years after annual cut-offs, then are retired to the Washington National Records Center, for an additional 20 years.

Inactive, completed case files prior to 1982 are maintained at the U.S. Army Investigative Records Repository, Fort Meade, MD 20755.

Automated electronic case status records and alphabetical card index files are retained as locator for both active and inactive records. Computer data and alphabetical card files are purged when the inactive case file is no longer retained.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Directorate for Industrial Security Clearance Review (DISCR), 4019 Wilson Blvd., Suite 101, Arlington, Va. 22203–1995.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to the System Manager.

Written requests from individuals must be notarized and should be sent to 4019 Wilson Blvd., Suite 101, Arlington, VA 22203–1995 and should include the individual's full name, any former names, date and place of birth, and Social Security Account Number (SSAN).

Request for copies of redacted, final determination should be sent to the System Manager, and should include the OSD Case Number of the records requested.

CONTESTING RECORDS PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Information is received from investigative reports from federal investigative agencies; personnel security records and correspondence; medical and personnel records, reports and evaluations; correspondence from contractors, employers, organizations of assignment and Federal agencies DoD organizations, agencies and offices; from individual, their attorneys or authorized representatives.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this record system may be exempt under 5 U.S.C. 522a(k)(5). For additional information, contact the System Manager.

[FR Doc. 84–29900 Filed 11–14–84; 8:45 am]
BILLING CODE 3810–01–M

Advisory Group on Electron Devices; Advisory Committee Meeting

AGENCY: DoD Advisory Group on Electron Devices.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices

(AGED) will meet in closed session on 6 November 1984 at Palisades Institute for Research Services, Inc., 1215 Jefferson Davis Highway, Crystal Gateway #3, Suite 1203, Arlington, Virginia 22202.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended (5 U.S.C. App. II 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 9, 1984.

[FR Doc. 84-29894 Filed 11-14-84; 8:45 am]

BILLING CODE 3810-01-M

DoD Advisory Group on Election Devices; Meeting

AGENCY: DoD Advisory Group on Electron Devices, DOD.

ACTION: Notice of Advisory Committee Meeting.

The DoD Advisory Group on Electron Devices (AGED) will meet in closed session on 13 December 1984 at Naval Station, Treasure Island, Room 215, Building 1, San Francisco, CA 94130.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II § 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: November 9, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-29895 Filed 11-14-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Equal Opportunity Management Institute Board of Visitors; Advisory Committee Meeting

The Defense Equal Opportunity Management Institute (DEOMI) Board of Visitors will meet at Patrick Air Force Base, Florida, 26–28 November 1984.

The purposes of the meeting will be to review the results of the Department of Defense Race Relations Education Board meeting and to examine DEOMI's overall capability to perform its stated mission requirements.

The meeting will convene at 3:00 p.m. on 26 November and adjourn on 28 November at 5:30 p.m. The meeting is open to the public. For further information, contact the DEOMI Public Affairs Office at (305) 494–6096.

Dated: November 8, 1984.

Norma L. Cook,

Acting OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-29897 Filed 11-14-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DoD.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: December 20, 1984, 8:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC. 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Microelectronics and Computers.

Dated: November 9, 1984.

Norma L. Cook,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-29898 Filed 11-14-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: November 28, 1984, 9:00 a.m. to 3:00 p.m.

ADDRESS: The Pentagon, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Major Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373–4930.).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

Dated: November 8, 1984.

Norma L. Cook,

Acting OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84-29896 Filed 11-14-84; 8:45 am]

BILLING CODE 3810-01-M

DoD University Forum Advisory Committee; Meeting

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: DoD-University Forum Advisory Committee Meeting.

SUMMARY: The DoD-University Forum will meet in open session on November 26, 1984, from 1:30 until 4:30 p.m. at the Hyatt Regency Crystal City Hotel, Arlington, Virginia.

The meeting is one of two formal meetings held annually as called for by the charter. Tentative agenda items will include export control issues, and foreign languages and area studies.

Public attendees are requested to telephone Edward Blake in the DoD Office of Research and Laboratory Management, (202) 694–0205, before COB November 21, 1984 to be advised of the meeting room and reserve a seat at the meeting.

Dated: November 9, 1984.

Norma L. Cook,

Acting OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–29899 Filed 11–14–84; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

National Advisory Council on Bilingual Education; Meeting

SUMMARY: This notice sets for the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Bilingual Education. Notice of this meeting is required under Section 10 (a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: December 3 and 4, 1984—9:00 a.m.–4:30 p.m., the Business Meeting will be held at: The U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, Conference Room, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Paul Balach, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. (202) 245–2600.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Bilingual Education is established under Section 732(a) of the Bilingual Education Act (20 U.S.C. 3242). The Council is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The meeting of the Council is open to the public. The proposed agenda includes the following:

I. Call to Order
II. Roll Call
III. Approval of Minutes from Previous Meeting
IV. Introduction of Vistors
V. Presentation of Information by Director of OBEMLA or designee
VI. Presentation of information by general public or organizations (limited to 5 minutes per person from any one group.)
VII. Committee Reports
VIII. Old Business
IX. New Business
X. Presentation of information by members of general public on items for possible future action by the Council.
XI. Meetings of Council Committees
XII. Council reconvenes
XIII. Adjournment

Records are kept of all Council proceedings and available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, D.C. 20202, Monday, through Friday, from the hours of 8:00 a.m.–4:30 p.m.

Dated: November 8, 1984.

George J. Rios,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 84–29861 Filed 11–14–84; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Board on International Education Programs; Meeting

AGENCY: National Advisory Board on International Education Programs, Education.

ACTION: Notice of Meetings.

SUMMARY: This notice sets forth the schedule of three forthcoming meetings of the Subcommittee on Reauthorization of the National Advisory Board on International Education Programs. Notice of these meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATES: December 11, 1984; January 9, 1985 and January 11, 1985.

ADDRESSES: December 11, 1984: FOB–6, Patterson Room, Horace Mann Learning Center, Room 1131, 400 Maryland Avenue, SW, Washington, D.C.

January 9, 1985: Federal Office Building, 50 United Nations Plaza, Room 406, San Francisco, California.

January 11, 1985: Federal Office Building, DHHS Conference Room, 35th Floor, 300 South Wacker Drive, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Richard J. Rowe, Postsecondary Relations Staff, ROB–3, Room 3907, 400 Maryland Avenue, SW, Washington, D.C. 20202 (202/245–9700).

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended, by the Education Amendments of 1980 (Pub. L. 96–374; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education.

These meetings of the Subcommittee on Reauthorization of the National Advisory Board on International Education Programs are open to the public. The agenda includes a discussion and review of Title VI of the Higher Education Act of 1965 (Pub. L. 89–329), as amended. Persons who wish to schedule personal presentations should contact Richard J. Rowe, Postsecondary Relations Staff, ROB–3 Room 3082, 400 Maryland Avenue, SW, Washington, D.C. 20202 (202/245–9700) by December 7, 1984.

Recommendations will be developed for the consideration of the National Advisory Board on International Education Programs during their meeting scheduled for March 4–5, 1985.

The meetings will be held from 9:00 a.m. to 4:00 p.m. p.m. the 11th of December; 9:00 a.m. to 4:00 p.m. the 9th of January; and, 9:00 a.m. to 2:00 p.m. the 11th of January.

Records are kept on the Committee proceedings and are available for public inspection at the Office of Postsecondary Relations Staff, from 8:00 a.m. to 4:00 p.m., ROB–3, 7th and D Streets, SW, Room 3907, Washington, D.C.

Signed at Washington, D.C., on November 9, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84–29963 Filed 11–14–84; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Board on International Education Programs; Meeting

AGENCY: National Advisory Board on International Education Programs, Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATES: January 6, 7, 8, 1985.

ADDRESS: Holiday Inn, 2600 Sand Dunes Drive, Monterey, California.

FOR FURTHER INFORMATION CONTACT: Richard J. Rowe, Postsecondary Relations Staff, ROB–3, Room 3082, 400 Maryland Avenue, SW, Washington, D.C. 20202 (202/245–9700).

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended, by the Education Amendments of 1980 (Pub. L. 96–374; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education.

This meeting of the National Advisory Board on International Education Programs is open to the public. The agenda includes a report from the Subcommittee on Part B, Title VI, Higher Education Act and, a preliminary report from the Subcommittee on Recommendations for the Reauthorization of the Higher Education Act of 1965, as amended (Title VI). In addition, a report from the Director, Center for International Education and overviews of activities and operations of the Office of Postsecondary Education will be presented.

The meeting will be held from 7:00 p.m. to 11:00 p.m., the 6th of January. The Committee members will visit the Defense Language Institute, Monterey, California on the 7th of January; and, the Center for International Studies, Stanford, California on the 8th of January.

Records are kept on the Committee proceedings and are available for public inspection at the Office of Postsecondary Relations Staff, from 8:00 a.m. to 4:00 p.m., ROB–3, 7th & D Streets, SW, Room 3907, Washington, D.C.

Signed at Washington, D.C., on November 9, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84–29964 Filed 11–14–84; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 17, 1984.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 9, 1984.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Application for grants under the Veterans Cost-of-Instruction Payments Program (VCIP).
Agency Form Number: ED–269
Frequency: Annually
Affected Public: Non-Profit Institutions
Reporting Burden
Responses: 800
Burden Hours: 800
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0

Abstract: Section 420 of the Higher Education Act authorizes payments to postsecondary institutions based on veteran student enrollments. The Veterans' Cost-of-Instruction Payments application obtains the necessary data to verify eligibility and calculate awards.

Type of Review Requested: Revision
Title: Student Aid Report
Agency Form Number: ED 255–1
Frequency: Annually
Affected Public: Individual or Households, Business or Other For-Profit, Non-Profit Institutions, Small Businesses or Organizations
Reporting Burden
Responses: 8,006,100
Burden Hours: 1,537,171.2
Recordkeeping Burden
Recordkeepers: 6100
Burden Hours: 652,700

Abstract: This form contains parental and/or student income and asset information which is used to determine the amount of federal aid the student receives for educational purposes.

Office of Postsecondary Education

Type of Review Requested: Revision
Title: National Direct Student Loan Program Report of Defaulted Loans as of December 30.
Agency Form Number: ED 574
Frequency: Annually
Affected Public: Business or Other for-Profit
Reporting Burden
Responses: 4,000
Burden Hours: 2,000
Recordkeeping Burden
Recordkeepers: 4,000
Burden Hours: 320

Abstract: This report provides information regarding an institution's capability to establish an effective collection program. The data may be used to establish default trends and compare ratios of various institutions.

Office of Postsecondary Education

Type of Review Requested: Revision
Title: National Direct Student Loan Program Report of Defaulted Loans as of December 31.
Agency Form Number: E40–1P
Frequency: Annually
Affected Public: State or Local Governments; Businesses or other For-Profit Organizations; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden
Responses: 4,000
Burden Hours: 2,000
Recordkeeping Burden
Recordkeepers: 4000
Burden Hours: 320

Abstract: This report provides information regarding an institution's capability to establish an effective collection program. The data may be used to determine default trends and to compare the performance of various institutions.

Type of Review Requested: New
Title: Certification Form for the Endowment Grant Program
Agency Form Number: ED D40–1P
Frequency: Annually
Affected Public: State or Local Governments; Businesses or other For-Profit Organizations; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden
Responses: 50
Burden Hours: 25
Recordkeeping Burden
Recordkeepers: 50
Burden Hours: 100

Abstract: An institution of higher education that is selected to receive an endowment grant must, according to program regulations, certify certain items of information about matching funds and about its application. The Secretary needs this information to determine whether grant funds may be disbursed and in what amount.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Performance Report under the Minority Institutions Science Improvement Program (MISIP)
Agency Form Number: ED 0007
Frequency: Annually
Affected Public: State or Local Governments: Businesses or other For-Profit Organizations; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden
Responses: 150
Burden Hours: 450
Recordkeeping Burden
Recordkeepers: 150
Burden Hours: 450

Abstract: The program officials use information from the performance report to assess a project's accomplishment of goals and objectives and to aid in effective management of the program.

[FR Doc. 84–29978 Filed 11–14–84; 8:45 am]
BILLING CODE 4000–01–M

Federal Education Data Acquisition Council; Meeting

AGENCY: Department of Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Federal Education Data Acquisition Council. This notice also describes the functions of the council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: December 6 and 7, 1984.

ADDRESS: Federal Office Building No. 6, Room 3000, 400 Maryland Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, Executive Director, Federal Education Data Acquisition Council, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202 (202) 426–7304.

SUPPLEMENTARY INFORMATION: The Federal Education Data Acquisition Council is established under section 400A of the General Education Provisions Act (Pub. L. 95–561; 20 U.S.C. 1221–3). The Council is established to advise and assist the Secretary with respect to the improvement, development and coordination of Federal education information and data acquisition activities, and to review the policies, practices, and procedures established by the Secretary.

The meeting of the Council is open to the public. The agenda includes:

FEDAC Interim Review Procedures
Followup Discussion of the Food and Nutrition Service as a Major Data Collection Agency
Ongoing Activities Related to Education Terminology
Council Business

Records are kept of all Council proceedings, and are available for public inspection at the Division of Education Information Management, 330 C Street SW., Washington, D.C. 20202 from the hours of 8:00 A.M. to 5:00 P.M.

Dated: November 9, 1984.

Linda M. Combs,

Deputy Under Secretary for Management.

[FR Doc. 84–29968 Filed 11–14–84; 8:45 am]
BILLING CODE 4000–01–M

Talent Search Program; Educational Opportunity Centers Program

AGENCY: Department of Education.

ACTION: Application Notice for New Awards for Fiscal Year 1985.

Applications are invited for new awards under the Talent Search and Educational Opportunity Centers Programs.

Authority for these programs is contained in sections 417A, 417B, and 417E of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d, 1070d–1, and 1070d–1c)

The Secretary is authorized to make grants under these programs to institutions of higher education, public and private agencies and organizations, and, in exceptional cases, secondary schools, if there are no other applicants capable of providing a Talent Search or Educational Opportunity Centers Program in the target areas to be served by the proposed projects (34 CFR 643.2 and 644.2, respectively). The purpose of the grant awards under both the Talent Search and Educational Opportunity Centers Programs is to permit applicants to carry out projects designed to identify qualified individuals from disadvantaged backgrounds and to assist them in preparing for programs in postsecondary education.

Closing Date for Transmittal of Applications: An application for a new award must be mailed or hand delivered by January 11, 1985.

Applications Delivered by Mail: An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.044 for the Talent Search Program, or 84.066 for the Educational Opportunity Centers Program, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: The Secretary is accepting applications for up to three years of funding under each program. However, the Secretary will not fund an applicant for a period of time longer than is requested by the applicant in its application. Applicants under each program requesting multi-year funding must, in accordance with 34 CFR 75.117, submit information that shows why a multi-year project is needed; a budget for the first year of the project; and an estimate of the Federal funds needed for each additional year requested.

The applications for new awards will be evaluated competitively under the selection criteria for new awards contained in 34 CFR 643.31 or 644.31 for Talent Search and Educational Opportunity Centers Programs, respectively. In addition, Talent Search applicants that have conducted a Talent Search project within the three previous years and Educational Opportunity Centers applicants that have conducted an Educational Opportunity Centers project within the three previous years may receive additional points on the basis of their prior experience. The prior experience section of the application will be evaluated on the basis of the priorities as specified in 34 CFR 643.32 and 644.32 for Talent Search and Educational Opportunity Centers Programs, respectively.

Suggestions for Fiscal Year 1985 Applicants for Talent Search and Educational Opportunity Centers Funds: Experience has shown that the most successful Talent Search and Educational Opportunity Centers projects have certain common characteristics. These can be summarized as follows:

(1) Projects that have a strong institutional, local, or private sector commitment to their objectives. This often takes the form of in-kind or cash contributions to enhance the opportunities made available to Talent Search and Educational Opportunity Centers participants.

(2) Projects that work closely with and are fully endorsed by the local community in the target area served by the project.

(3) Projects that provide mechanisms to monitor participants' progress.

(4) Projects that assess the effectiveness of accomplishing goals and objectives.

(5) Projects that make an effort to meet the needs of participants in the target area, and to place a specified number or percentage of students into postsecondary education programs.

(6) Projects that actively seek to improve educational opportunity and access for all students, particularly those who traditionally have not participated fully in higher education, including projects that address the special needs of racial or ethnic minority groups, women, and the handicapped.

In view of this experience, the Secretary encourages applicants to incorporate these characteristics into their applications. Applicants should note that these characteristics are included only to assist them in developing potentially successful projects. The characteristics themselves in no way amend the selection criteria in either 34 CFR 643.41 or 34 CFR 644.31, respectively.

Available Funds: The Department of Education Appropriation Act, 1985, appropriated $174,940,000 for the Special Programs for the Disadvantaged. Of that amount, it is anticipated that approximately $20,272,500 and $9,317,500 million will be available for the Talent Search and Educational Opportunity Centers Programs, respectively, in fiscal year 1985. With these amounts, the Secretary expects to fund 172 new Talent Search projects with average grant awards of $117,863, and 35 new Educational Opportunity Centers projects with awards averaging $266,205. These projections in no way, however, bind the Secretary to specific numbers of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages are expected to be ready for mailing by November 26, 1984. Application packages will not automatically be mailed to all institutions of higher education. However, they will be mailed to all currently funded grantees under the Talent Search and Educational Opportunity Centers Programs. Application packages may be obtained by contacting the Division of Student Services, Education Outreach Branch, U.S. Department of Education (Room 3060, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone number: (202) 245–2165.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations. (Approved by Office of Management and Budget under control numbers 1840–0549 and 1840–0065 for Talent Search and Educational Opportunity Centers Programs, respectively.)

The Secretary suggests that the narrative portion of the application not exceed thirty (30) pages in length. The Secretary further suggests that only the information required by the application form be submitted.

Applicable Regulations: Regulations applicable to this program are:

(a) Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, and

(b) Regulations governing the Talent Search and Educational Opportunity Centers Programs (34 CFR Parts 643 and 644).

Further Information: For further information contact Walter Lewis, Chief, Education Outreach Branch, Division of Student Services, U.S. Department of Education (Room 3060, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone number: (202) 245–2165.

(20 U.S.C. 1070d, 1070d–1b, and 1070d–1c)

(Catalog of Federal Domestic Assistance Number: 84.044 and 84.066, Talent Search and Educational Opportunity Centers Programs, respectively)

Dated: November 9, 1984.

[FR Doc. 84-29980 Filed 11-14-84; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Endowment Grant Program; Application Notice for New Endowment Grants for Fiscal Year 1985

Applications are invited for new endowment grants for FY 1985 under the Endowment Grant Program.

Authority for this program is contained in section 333 of Title III of the Higher Education Act of 1965 (HEA), as amended, 20 U.S.C. 1065a.

Under the Endowment Grant Program, the Secretary is authorized to make grants to eligible institutions of higher education funds at those institutions. The Federal grant funds must be matched dollar-for-dollar by the institution selected to receive a grant.

Closing date for transmittal of applications: An application for an endowment grant must be mailed or hand-delivered by January 25, 1985.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention 84.031G, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

General program information: Under the Endowment Grant Program, the Secretary awards grants to eligible institutions of higher education to establish or increase endowment funds. Grantees must match the Federal grant funds dollar-for-dollar. The Federal grant and the institutional match is called the "endowment fund corpus." Institutions must invest, and may not spend, the endowment fund corpus for the 20 year grant period. Afterwards, the institution may use the endowment fund corpus for any educational purpose.

In general, a grantee may spend up to 50 percent of endowment fund income earned prior to the date of each proposed expenditure. Endowment fund income is the value of the endowment fund minus the endowment fund corpus. A grantee may use that 50 percent portion of the endowment fund income to defray any expenses necessary to operate the institution. A grantee must invest the other 50 percent portion of endowment fund income for the 20 year grant period. Afterward, the grantee may use all endowment fund income for any educational purpose.

Eligible applicants: The Endowment Grant Program is one of four Institutional Aid Programs authorized by Title III of the Higher Education Act of 1965 (HEA), as amended. The other three programs are the Strengthening, Special Needs, and Challenge Grant Programs. Under section 333(b)(4) of the HEA, an institution is eligible to receive a grant under the Endowment Grant Program if it qualifies as an eligible institution under the Challenge Grant Program. An institution, in turn, qualifies as an eligible institution under the Challenge Grant Program if it qualifies (1) as an eligible institution under 34 CFR 627.2(b) or (d) of the Challenge Grant Program regulations, (2) as an eligible institution for the Strengthening Program under 34 CFR 625.2 and 625.3 of the Strengthening Program regulations or (3) as an eligible institution for the Special Needs Program under 34 CFR 626.2 and 626.3 of the Special Needs Program regulations.

Under each of the above program regulations, the Secretary determines an institution's eligibility based in part upon an institution's education and general (E&G) expenditures, and the amounts of Pell Grants and other Title IV HEA student financial assistance students attending that institution receive for a particular award year.

Potential applicants, including current grantees under one or more of the other Institutional Aid Programs mentioned above, are advised that a notice was published in the **Federal Register** on September 28, 1984 (49 FR 38331-38341) explaining how an institution becomes eligible for the Endowment Grant Program. Under that notice, institutions were required to submit eligibility requests by October 29, 1984. The Secretary will consider funding only those institutions determined eligible to apply for a grant under the Endowment Grant Program in FY 1985 pursuant to the September 28, 1984 notice.

Application information: Under § 628.20(b) of the Endowment Grant Program regulations, an applicant must submit a long range development plan (referred to in the application form as an "institutional narrative") as part of its application, unless the applicant is, at the closing date established by the Secretary for submission of an endowment grant application, (1) a recipient of a development grant under the Strengthening, Special Needs, or Challenge Grant Programs; (2) has applied in FY 1985 for a development grant under the Strengthening or Special Needs Programs; or (3) has applied in FY 1985 for a Strengthening Program planning grant solely to prepare an application for a development grant. The Secretary requests that the long-range development plan not exceed thirty double-spaced typewritten pages.

Available funds: Grants awarded under the Endowment Grant Program in FY 1985 will range from $50,000 to $500,000. Applicants are advised that a notice was published in the **Federal Register** on November 6, 1984 (49 FR 44320), establishing July 15, 1985 as the deadline for FY 1985 endowment grantees to raise their required matching funds. Applicants are urged, therefore, to request grants in an amount that they will realistically be able to match by the end of the fund-raising period, July 15, 1985. The Secretary anticipates awarding approximately 30 to 135 grants in FY 1985.

The Department of Education Appropriation Act, 1985, appropriated $141,208,000 for the Institutional Aid Programs in FY 1985. Of that amount, approximately $15,200,000 will be available for awarding grants under the Endowment Grant Program.

With funds transferred from the Special Needs Program to the Endowment Grant Program, the Secretary awards endowment grants so that the amounts required under 34 CFR 626.31 (a) and (b) of the Special Needs Program regulations to be awarded to junior or community colleges and to institutions with special needs that have historically served substantial numbers of black students will be so awarded. (20 U.S.C. 1065a, 1069c).

The Department of Education Appropriation Act, 1985, reserves $45,741,000 of the monies appropriated for the Institutional Aid Programs for awards to historically black colleges and universities. This reservation may limit funds available to institutions that are not historically black institutions under this competition.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages are expected to be ready for mailing by November 26, 1984. Interested parties may obtain a copy of the application form by writing to the Institutional Aid Programs, U.S. Department of Education, L'Enfant Plaza Station, Post Office Box 23868, Washington, D.C. 20024. The program information packages will include the final Endowment Grant Program regulations.

An application must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing this program.

The Secretary strongly urges that applicants not submit information that is not required. (Approved by the Office of Management and Budget under Control Number 1840–0531)

Applicable regulations: Regulations applicable to the Endowment Grant Program include:

(1) The regulations in 34 CFR 624.1 through 624.3, 624.6, 624.10, 624.20, 624.22 and 624.40.

(2) The regulations in 34 CFR 625.2, 626.2 and 627.2.

(3) The regulations in 34 CFR Part 628 published in the **Federal Register** on July 12, 1984 (49 FR 28520–28536) and amended on September 21, 1984 (49 FR 37325).

(4) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 74.62(h); 34 CFR 74.80 through 74.85; 34 CFR 75.100 through 75.102 and 75.217; and 34 CFR Part 78.

Further information: For further information, contact Dr. Caroline Gillin, Director, Division of Institutional Development, U.S. Department of Education, Room 3042, Regional Office Building 3, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 426–8960.

(20 U.S.C. 1064–1069c)

(Catalog of Federal Domestic Assistance No. 84–031G—Endowment)

Dated: November 9, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84–29979 Filed 11–14–84; 8:45 am]

BILLING CODE 4000–01–M

Indian-Controlled Schools Enrichment Program; Extension of Closing Date

AGENCY: Department of Education.

ACTION: Notice of Extension of Closing Date for Transmittal of New Applications for Fiscal Year 1985 Assistance under the Indian-Controlled Schools Enrichment Program.

SUMMARY: This notice extends the closing date of November 26, 1984 to March 4, 1985 for the transmittal of new applications under the Indian-Controlled Schools Enrichment Program (84.072A). This extension is necessary because section 513 of the Education Amendments of 1984, Pub. L. 98–511, enacted on October 19, 1984, amended section 303 of the Indian Elementary and Secondary School Assistance Act by changing certain eligibility requirements for applying for funds under the Indian-Controlled Schools Enrichment Program.

SUPPLEMENTARY INFORMATION: Section 513 of Pub. L. 98–511 amended section 303(b) of the Indian Education Act by exempting schools serving Indian children in California, Oklahoma, or Alaska from the requirement that schools for Indian children or local educational agencies eligible to receive funds under this program be located "on or near reservations." This requirement is found in 34 CFR 253.2 of the regulations for this program. Revised regulations incorporating the changes made by this legislation will be published in the **Federal Register** at a later date.

The application notice for this program, published in the **Federal Register** on August 20, 1984 (49 FR 33046), provides detailed information concerning the Indian-Controlled Schools Enrichment Program. This notice extends the closing date for transmittal of new applications to allow those schools not previously eligible for assistance under this program to have an opportunity to apply.

FOR FURTHER INFORMATION CONTACT: Inquiries concerning this extension date should be addressed to Elsie Janifer, Indian Education Programs, U.S. Department of Education, Office of Elementary and Secondary Education, Room 2177, FOB–6, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 732–1918.

(Catalog of Federal Domestic Assistance No. 84.072, Indian Education Grants to Indian-Controlled Schools)

(20 U.S.C. 241bb(b))

Dated: November 9, 1984.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 84–29977 Filed 11–14–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Average System Cost Methodology for Use in the Bonneville Power Administration Exchange Transmission Credit Program

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Implementation of methodology for determining exchange transmission credit.

SUMMARY: Section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839c(c), establishes the residential exchange program whereby each participating utility receives a BPA subsidy equal to the difference between BPA's priority firm wholesale power rate and the participating utility's average system cost of resources. The subsidy applies to each participating utility's residential and small farm loads. The Northwest Power Act makes it clear that only the BPA Administrator is authorized to determine the average system cost of participatring utilities' resources, subject to limited review by the Federal Energy Regulatory Commission (Commission).

On October 1, 1984, the Commission issued Order No. 400, 29 FERC ¶ 61,013,

approving and implementing the reformed Average System Cost (ASC) methodology adopted by the BPA Administrator in a record of decision dated June 5, 1984. The Administrator's decision was made following a statutory consultation proceeding, conducted pursuant to section 5(c)(7) of the Northwest Power Act. Effective October 1, 1984, the reformed ASC methodology, which is an administrative rule adopted by BPA and approved by the Commission, will determine the level of subsidy paid to each participant in the residential exchange program authorized by section 5(c) of the Northwest Power Act.

The methodology adopted in this rule pertains to BPA's Exchange Transmission Credit (ETC) program, which is patterned after the residential exchange program. The ETC program is designed to provide residential exchange benefits to Pacific Northwest utilities that own transmission plant, but no generation plant. The statutory authority for each program is found in section 5(c) of the Northwest Power Act.

Section IV of the current ETC methodology makes clear that: (1) The consultation proceeding just concluded under section 5(c)(7) of the Northwest Power Act relates to modifications of both the residential exchange ASC methodology and the ETC methodology, (2) subsidy payments received under the ETC methodology are to equal the payments that would be caluculated under the residential exchange ASC methodology except in instances where ETC payments are limited by Exhibit E to the Exchange Transmission Credit Agreement, and (3) modifications to the ETC methodology are to become effective as of the same date as modifications to the residential exchange ASC methodology.

This notice concludes the consultation proceeding, as it regards the ETC program, by adopting and implementing a revised ASC methodology for use in calculating subsidy payments to utility participants in the ETC program. The revised methodology is patterned after the residential exchange ASC Methodology approved by the Commission on October 1, 1984. This rule is effective as of October 1, 1984, to coincide with the effective date of Commission approval of the residential exchange ASC methodology rule.

Responsible Official

Stephen A. Ailshie, Assistant Administrator for Financial Management, is the official responsible for this methodology.

ADDRESSES:

For further information contact Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212; (503) 230–3478. Oregon callers outside the Portland area may use the toll-free number (800) 452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use (800) 547–6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 N.E. Irving Street, Portland, Oregon 97208, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene Oregon 97401, 503–687–6952.

Mr. Earl C. Schoer, Acting Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3860.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Richard D. Casad, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main St., Boise, Idaho 83707, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

A. Relevant Statutory Provisions

Section 5(c)(1) of the Northwest Power Act, 16 U.S.C. 839 (c)(1), provides that BPA shall acquire certain amounts of power offered for sale by Pacific Northwest electric utilities. In exchange, BPA offers to sell "an equivalent amount of electric power to such utility for resale to that utility's residential users within the region." [1] *See, generally,* H.R. Rep. No. 976, Part I, 96th Cong., 2d Sess. at 60 (1980). Sales to the utility may not be restricted below the amount of power acquired from the utility. *See* section 5(c)(6).

The residential exchange is not a conventional power transaction. There is no power transferred either to or from BPA.[2] System schedulers do not dispatch the exchange; line losses are not incurred. "In practice, only dollars are exchanged, not electric power." *Public Utility Commissioner* v. *BPA,* 583 F. Supp. 752, 754 (D. Or. 1984). *See* Commission Order No. 400, 29 FERC ¶ 61,013 (1984).

The power sale concept was created by Congress for BPA ratemaking purposes. *E.g.,* section 7(b)(1).[3] Practically speaking, the purpose of the residential exchange is to provide a subsidy to exchanging utilities. Costs subsidized by BPA do not have to be recoverd in the retail rates charged to the residential customers of exchanging utilities. *See* Answer of Bonneville Power Administration to Substantive Comments on the Revised Average System Cost Methodology, at 6, Commission Docket No. RM84–16 (July 26, 1984).

BPA exchange power is priced at the same rate as that for general requirements sales to preference customers (the "priority firm rate"). *See,* section 7(b)(1) of the Northwest Power Act, 16 U.S.C. 839(b)(1). In contrast, the amount paid by BPA to the participating utility is not a coventional power rate. Section 5(c)(1) states that BPA is to pay "the average system cost of that utility's resources." 16 U.S.C. 839c(c)(1). Section 5(c)(7) of the Northwest Power Act gives BPA's Administrator the discretionary authority to determine average system cost (ASC) on the basis of the methodology to be established in consultation proceedings. 16 U.S.C. 839c(c)(7). The only express statutory limits on the Administration's authority are found in section 5(c)(7) (A), (B) and (C).

[1] The exchange was set equal to 50 percent of a participating utility's qualifying residential and small farm load as of July 1, 1980, and has been increasing in equal increments toward 100 percent of such load. *See,* section 5(c)(2).

[2] Section 5(c)(5) allows BPA to acquire an "equivalent amount of electric power from other sources to replace power sold to [a participating] utility," if the cost of such replacement acquisition is less than the applicable ASC. Once again, however, the key phrase is "equivalent amount." In any event, such alternative purchases, other than BPA resources, have been construed to require seven years advance notice. *See,* section 4(a), Residential Purchase and Sale Agreement, Contract No. DE–MS79–83BP9. BPA designated this contract as part of the record of this consultation proceeding. (R. 6800).

[3] The outcome of this consultation proceeding will not change the way in which BPA establishes rates under section 7 of the Northwest Power Act. The resource concept was devised by Congress to allocate the benefits and costs of the Federal Base System among competing classes of BPA customers. BPA has faithfully implemented Congress' ratemaking directives. However, the resource concept should not obfuscate the nature of the residential exchange as a subsidy from BPA to the participating utilities.

In section 5(c)(7), Congress provided an express mechanism for formulation of an electric utility's "average system cost" (ASC). Section 5(c)(7) states:

> The "average system cost" for electric power sold to the Administration under this subsection shall be determined by the Administrator on the basis of a methodology developed for this purpose in consultation with the Council, the Administrator's customers, and appropriate State regulatory bodies in the region. Such methodology shall be subject to review and approval by the Federal Energy Regulatory Commission. Such average cost shall not include—
>
> (A) the cost of additional resources in an amount sufficient to serve any new large single load of the utility;
>
> (B) the cost of additional resources in an amount sufficient to met any additional load outside the region occurring after the effective date of this Act; and
>
> (C) any costs of any generating facility which is terminated prior to initial commercial operation.

Section 5(c)(7) requires that the ASC subsidy: (1) Be determined by the Administrator; (2) be based upon a rate formula methodology developed by the Administrator in consultation with the Northwest Power Planning Council, BPA customers, and state regulatory bodies, (3) be subject to review and approval by the Federal Energy Regulatory Commission (FERC), and (4) not include costs identified in section 5(c)(7)(A), (B), and (C).

The ASC methodology established by the BPA Administrator pursuant to section 5(c)(7) of the Northwest Power Act is a "rate formula." *Public Utility Commissioner* v. *BPA*, 583 F. Supp. 752, 754 (D. Or. 1984). The methodology is an administrative rule of both BPA and FERC. *See* 18 CFR 35.13a (1983 ed.).

Under the methodology, exchanging utilities make proposed ASC filings with BPA, which reviews the filings for conformity with the ASC methodology and the requirements of section 5 of the Northwest Power Act. The BPA Administrator then determines the appropriate ASC for the filing utility. The utility receives an exchange subsidy according to the ASC determined by the Administrator and approved by FERC.

Through June of 1985, BPA's rates for service to direct-service industrial (DSI) customers are to recover, *inter alia*, the "net costs incurred by the Administrator pursuant to section 5(c) of this Act . . . to the extent that such costs are not recovered through rates applicable to other customers." *See*, section 7(c)(1)(A). However, beginning in July of 1985, a new ratemaking methodology for recovering the net cost of the residential exchange is to be established. Then, residential exchange costs may have a greater effect on the rates of all customer classes.

The ASC methodology must be designed so that BPA does not become the "deep pocket" to which participating utilities may shift excessive or improper resource costs. The methodology should give participating utilities an incentive to minimize their costs. Otherwise, BPA could be faced with either of two statutorily impermissible alternatives. First, BPA may not be able to set reasonable rates for its customers, who must pay the cost of the subsidy through their rates. Second, if net exchange costs cause rates to rise to the level where loads decline, BPA may not be able to satisfy the requirement of section 7(a) of the Northwest Power Act that its rates recover total revenue requirement. BPA is a self-financing government agency, which must recover its costs through rates for sales of electric power and energy. *See* 16 U.S.C. §§ 832f, 838g and 839e(a). The residential exchange subsidy should not be borne by the Federal Treasury.

The Exchange Transmission Credit program is a variant of the residential exchange, designed specifically to provide residential exchange benfits to Pacific Northwest utilities that own transmission plant, but no generation plant. The statutory authority for each program is found in section 5(c) of the Northwest Power Act. The ETC methodology is patterned after the residential exchange ASC methodology. Accordingly, whenever the ASC methodology is modified by BPA, the ETC methodology must be modified as well.

B. The Reformed ASC Methodology

Following the statutory consultation proceeding commenced on October 7, 1983 (48 FR 4230), the Administrator adopted a reformed ASC methodology in a record of decision issued on June 5, 1984. That methodology was approved, in its entirety, by the Commission on October 1, 1984.

Significant features of the reformed ASC methodology adopted in this Record of Decision include:

1. Retention of the so-called jurisdictional approach under which retail rate orders of regulatory agencies are used as the primary source of data for computing the ASC for utilities participating in the residential exchange. However, BPA will carry out its statutory role through an independent determination of the validity of all data submitted in ASC filings recognizing the different purposes of ASC filing review and retail rate regulation. This independent determination will require greater involvement in retail rate cases of utilities participating in the residential exchange program.

2. Inclusion of 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.

3. Exclusion of all Construction Work In Progress from the calculation of ASC.

4. Use of a participating utility's weighted cost of debt securities to determine a return component of ASC. This is intended to eliminate the potential for utilities to recover terminated power plants costs indirectly through their jurisdictionally allowed equity returns and capital structures.

5. Exclusion of income taxes from ASC, meaning that BPA will no longer subsidize the income taxes of participating utilities. Income taxes are not a cost of resources within the meaning of Section 5(c) of the Northwest Power Act.

6. Simplification of procedures for functionalizing (separating) costs between subsidized generation and transmission accounts, and nonsubsidized distribution and "other" accounts.

7. Clarification of Section VI, *Change In Average System Cost Methodology*, of the current ASC Methodology to better reflect the purpose of the rule. Once an ASC Methodology is adopted in a record-billing proceeding, the Administrator may retain that methodology for at least one year after implementation so that experience may be gained thereunder before it is subject to further revision or change.

8. Changes in the timetable for BPA review of individual ASC filings to permit more thorough analysis.

9. "Phase-in" of the reformed ASC methodology in order to minimize the retail rate effects of the change in methodology. Under the phase-in, the new ASC methodology was implemented by the Commission on October 1, 1984. For the ensuing 9-month period, the actual ASC subsidy for each participating utility would be determined as the average of the ASC in effect on July 1, 1984, and the ASC calculated under the new methodology. On July 1, 1985, the new methodology would become the exclusive means of determining the ASC of each participating utility.

A full explanation of the reformed methodology is provided in the Administrator's Record of Decision and in Commission Order No. 400. Under the reformed methodology, BPA estimates that it will continue to pay a residential exchange subsidy of approximately $170

million per year through the residential exchange program.

II. The Reformed ETC Methodology

In accordance with Section IV of the ETC methodology, BPA is hereby revising that methodology to conform to the reformed ASC methodology. Each modification follows a corresponding modification to the residential exchange ASC methodology, which have been explained in detail in the BPA Administrator's Record of Decision of June 5, 1984, and in Commission Order No. 400, 29 FERC ¶ 61,013 (1984).

III. Effective Date

Consistent with Section IV of the current ETC methodology, this modification to that methodology is effective as of October 1, 1984, to coincide with the effective date of Commission approval of the residential exchange ASC methodology. BPA also relies on the reasons for immediate effectiveness given by the Commission in Order No. 400, slip order at 36–37.

Consistent with the filing requirements under the reformed ASC methodology, each participant in the ETC program will be required to make a filing in conformance with the new ETC methodology within 20 days after this document is published in the **Federal Register.**

In consideration of the foregoing discussion, and following the consultation proceeding prescribed by section 5(c)(7) of the Northwest Power Act, BPA is modifying the Exchange Transmission Credit methodology, as set forth below.

Issued in Portland, Oregon on November 7, 1984.

Peter T. Johnson,

Administrator.

Review Procedure—Bonneville Power Administration

The following rule sets forth the procedures by which an Average System Cost (ASC) fling is to be submitted to Bonneville Power Administration (BPA) and by which the BPA review process will be conducted. BPA's review is to determine the ASC for the purpose of the Exchange Transmission Credit program. This rule becomes Exhibit B incorporated by reference into the Exchange Transmission Credit Agreement.

I. Definitions

Definitions are included in this rule to conform to the format of the residential exchange ASC methodolgy. For purposes of BPA's review procedures for Appendix 1, *infra*, the following definitions apply:

A. "Average system Cost" or "ASC" means for each Jurisdiction and each Reimbursement Period the quotient obtained by dividing Contract System Cost by Contract System Load.

C. "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 incude Costs excluded from ASC by section 5(c)(7) of the Northwest Power Act.

D. "Contract System Load" means the firm energy load used by the State Commission for the purpose of establishing retail rates, adjusted pursuant to Appendix 1.

E. "Costs" means the aggreate 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 Jursidiction.

F. "File" or "Filed" means that the Appendix 1 has been:

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

(2) 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.

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

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

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

J. "Reimbursement Period" means the period of time during which a Utility's jurisdictional retail rate schedules are in effect, commencing with the effective date of new retail rate schedules in the Jurisdiction; provided that no Reimbursement Period shall commence prior to or extend beyond the term of the utility's ETC agreement. For the purposes of any initial Appendix 1 filing, the Reimbursement Period shall commence on the date such Appendix 1 is filed and end with the effective date of the next retail rate change.

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

L. "State Commission" means a state regulatory body, prefernce utility governing body, or other entity authorized to establish retail electric rates in a Jurisdiction.

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

II. Filing Procedures

The procedures set forth in this section state the filing requirements for all Utilities which File an Appendix 1. The procedures are as follows:

A. Appendix 1 is a form that identifies Contract System Costs and Contract System Load and permits the calculation of ASC. B. For each Reimbursement Period and for each regional jurisdiction in which a utility provides service, the Utility shall complete and File three copies of Appendix 1 as follows:

1. Within twenty (20) working days after the date the Commission grants interim approval, or final approval in the event no interim approval is granted to any revised ASC Methodology, the Utility shall File an Appendix 1, which includes a loss study, reflecting its Costs for the test period for the rate schedule(s) then in effect for each Jurisdiction. Subject to the provisions of section III, the ASC determined from each Appendix 1 shall be the rate applicable to exchange power from that Jurisdiction during the initial Reimbursement Period. For purposes of this subsection, the initial Reimbursement Period shall commence on the date the Commission grants interim approval, or final approval in the event no interim approval is granted to any revised Methodology; provided that is a Utility Files an initial Appendix 1 after the twenty-day deadline, BPA make the new ASC payable only from the date the initial Appendix 1 was actually Filed. However, BPA shall not delay as a result of a late filing of an Appendix 1, the effective date of any change in the ASC if the late filing was the result of unavoidable delay or excusable neglect, and the Utility proceeded to File its initial Appendix 1 as soon as practicable. If a Utility fails to File its initial Appendix 1 within the twenty-day deadline, the ASC of the

Utility for the initial Reimbursement Period shall be zero (0) until the Utility files its initial Appendix 1.

2. Thereafter, not later than five (5) working days after filing for a jurisdictional rate change or otherwise commencing a rate change proceeding, the Utility shall File a preliminary Appendix 1, setting forth the Costs proposed by the Utility and shall deliver to BPA all information initially provided to the State Commission.

3. Not later than twenty (20) days following the commencement date of a new Reimbursement Period, the Utility shall File a revised Appendix 1, which includes a loss study, reflecting its Costs as approved by the State Commission and a reconciliation of all Costs included on the revised Appendix 1 to the rate order issued by that Utility's State Commission. Subject to the provisions of section III of this rule, the ASC included in the revised Appendix 1 will be the ASC applicable to exchange power for that Jurisdiction during the Reimbursement Period, provided that if a Utility Files a revised Appendix 1 after the twenty day deadline, BPA may make the new ASC payable only from the date the revised Appendix 1 was actually Filed. However, BPA shall not delay as a result of a late filing of an Appendix 1, the effective date of any change in the ASC if the late filing was the result of unavoidable delay or excusable neglect, and the Utility proceeded to File its revised Appendix 1 as soon as practicable.

4. (a) A Utility filing a preliminary Appendix 1 shall mail written notice thereof to each of BPA's Regional Power Sales Customers or their designee.

(b) A Utility filing a revised Appendix 1 shall mail written notice thereof to each of BPA's Regional Power Sales Customers or their designates. This notice shall make reference to the right to comment thereon and shall state the date the Utility Filed its revised Appendix 1.

C. If BPA or any of its regional power sales customers have been denied the right to participate in a jurisdictional rate review proceeding or with rights equivalent to any retail customer of the Utility, no change in ASC based on a change of Costs authorized in that proceeding shall be affective until BPA has completed its review pursuant to section III of this rule.

III. BPA Review Process

A. BPA may intervene in each jurisdictional rate proceeding for each Utility participating in the ETC program.

B. Each Appendix 1, except those required by section II(B)(2) of this rule, shall be reviewed by BPA or its designee to determine whether the Costs are consistent with generally accepted accounting principles for electric utilities, whether Contract System Costs contains only allowed Costs, and whether the revised Appendix 1 complies with the requirements of the Methodology including applicable definitions and requirements incorporated from the Commission's Uniform System of Accounts. In addition, each Appendix 1 shall be reviewed by BPA or its designee to determine whether the Contract System Load used by the Utility is an appropriate load for purposes of the Utility's ASC computation.

BPA will make an independent determination for ASC computation of (1) the appropriateness of the inclusion of Costs; (2) the reasonableness of the Costs included in Contract Systems Cost; and (3) the appropriateness of Contract System Loads. BPA shall not be obligated to pay an ASC different than the ASC based on Contract System Costs and Contract System Load as determined by BPA: provided that if a final order of the Commission or a reviewing court rejects BPA's ASC determination, then the ASC payable by BPA shall be the ASC as revised by BPA on remand.

C. The review period for each Appendix 1 required by section II(B)(1) of this rule shall commence no later than one hundred (100) days from the date the Utility Files the Appendix 1 required by section II(B)(1). BPA shall mail written notice of the date BPA's review period commences to the Utility, and to each of BPA's Regional Power Sales Customers or their designee. The Appendix 1 required by section II(B)(1) of this rule shall then be subject to review as set forth in section III(D). For purposes of the review process, the Appendix 1 referred to in section II(B)(1) shall be deemed to be a "revised Appendix 1" as used in III(D) below and the date the review period commences shall be deemed be the date the Utility Filed its revised Appendix 1.

D. The revised Appendix 1 described in section 11(B)(3) of this rule shall be subject to review as follows:

1. Not later than 80 days following the date a Utility Files a revised Appendix 1, only Regional Power Sales Customers or their designee may submit written challenges to Costs included in the Utility's Contract System Costs. The challenge shall identify the specific Cost and state the nature of the challenge. Any of BPA's Regional Power Sales Customers who submit challenges will be accorded automatic party status for purposes of the review process on that Utility's filing. To be considered by BPA, challenges must be received by BPA no later than eighty (80) days following the date a Utility Files its revised Appendix 1. In addition to those of BPA's Regional Power Sales Customers who so request, others will be accorded party status for a specific filing if said request is received no later than eighty (80) days following the date a Utility Files its revised Appendix 1. For purposes of the review process, the Utility is a party to any review of any Appendix 1 which is submitted by the Utility.

2. (a) Not later than ninety (90) days following the date the Utility Files its revised Appendix 1, BPA shall mail to the Utility and all parties a notice: (1) Listing each challenged Cost and the nature of the challenge; (2) listing all parties for the review process for the revised Appendix 1; and (3) requesting comments by all parties on challenged Costs.

(b) Comments shall be submitted in writing to BPA and to all parties. Written comments, to be considered, must be *received* by BPA and must be mailed to all parties within thirty (30) days of the date of the notice.

(c) Parties may submit written cross comments in response to the previously submitted comments. Cross comments must be in writing and must be received by BPA and must be mailed to all parties not later than fifteen (15) days following the date the parties submit written comments.

3. Requests for oral arguments before the Administrator or his designate must be submitted in writing to BPA with a statement setting forth reasons by the party believes the review process will be enhanced thereby. The written requests for oral arguments must be submitted no later than one hundred and fifty (150) days following the date for the Utility Files its revised Appendix 1. BPA may, in its sole discretion, grant the request for oral argument. Requests for oral argument shall be served on all parties.

4. (a) Not later than one hundred and thirty-five (135) days following the date a Utility Files its revised Appendix 1, BPA may, in its sole discretion, issue a notice to all parties requesting comments on Costs that have not been challenged previously, on Contract System Loads, and on other issues that have not been raised previously. Any challenge to the Contract System Load used by the Utility in computing ASC may be raised at this time only, and only by BPA. All comments responding to this notice must be received in writing no later than one hundred and fifty (150) days following the date the Utility Files its revised Appendix 1. In addition to

providing the written comments to BPA, any party commenting shall provide all parties with a copy of the comment not later than one hundred and fifty (150) days following the date the Utility Files its revised Appendix 1.

(b) Parties may submit written cross comments in response to the comments submitted in response to the notice in section III(D)(4)(a) of this rule. Cross comments from all parties must be *received* in writing by BPA and must be mailed to all other parties not later than one hundred and sixty-five (165) days following the date the Utility Files its revised Appendix 1.

5. In the event a request for oral argument is granted, any party shall be permitted to present oral argument. The presentation of the Utility shall be last. Oral argument shall be presented no later than one hundred and eighty (180) days from the date a Utility Files its revised Appendix 1.

6. The Review Period will end two hundred and ten (210) days from the date the Utility Files its revised Appendix 1. BPA will issue its final determination not later than two hundred ten (210) days from the date the Utility Files its revised Appendix 1.

If the date of BPA's final determination or any other deadline contained in these review procedures falls on a Saturday, a Sunday, or a legal public holiday, then the deadline or BPA's final determination shall fall on the first day following that is not a Saturday, a Sunday or a legal public holiday. Legal public holiday means legal public holiday as defined in 5 U.S.C. 6103(a).

E. 1. BPA may request data from the Utility at any time during the Review Period. Each Utility shall respond to reasonable data requests for information relevant to Appendix 1 from BPA, provided that the furnishing of proprietary or confidential information to any party to the review proceedings may be made contingent on the granting of proper safeguards to prevent unauthorized use or disclosure. The Utility shall provide all the data requested no later than thirty (30) days from the date of BPA's data request. If the Utility objects to the data request, it shall state in writing to BPA the specific basis for its objection no later than twenty-five (25) days from the date of BPA's data request. BPA will issue a ruling as to whether the Utility's objection will be sustained or overruled. If BPA rules that the Utility must comply with the data request, the Utility has fifteen (15) days from the date of BPA's ruling to comply. If the Utility does not provide the data requested, BPA may, in its discretion, remove from Contract System Costs all Costs that are associated with the data not provided.

2. Data requests from persons or entities other than BPA shall be limited as follows. Each Utility shall respond to reasonable data requests for information relevant to Appendix 1 from any party in the review process for the Utility's Appendix 1, provided that the furnishing of proprietary or confidential information to any party to the review proceedings may be made contingent on the granting of proper safeguards to prevent unauthorized use or disclosure. A Utility which provides data to any party in response to a data request by that party shall also provide the same data to BPA. Data requests must be received by the Utility no later than forty (40) days from the date the Utility Filed its revised Appendix 1. The data request must identify the specific Cost(s) that is associated with the information requested. The Utility shall provide all the data requested no later than sixty-five (65) days from the date the Utility Filed its revised Appendix 1. If the Utility objects to the data request, it shall state with specificity in writing to BPA the basis for its objection. BPA will issue a ruling as to whether the Utility's objection will be sustained or overruled. The Utility must submit its objection no later than sixty (60) days from the date the Utility Filed its revised Appendix 1. If BPA rules that the Utility must comply with the data request, the Utility has fifteen (15) days from the date of BPA's ruling to comply. If the Utility does not provide the data requested, BPA may, in its discretion, remove from contract System Costs all Costs that are associated with the data not provided.

3. All written comments and written cross comments received by BPA by the deadlines set forth above will be included as part of the record supporting the ASC determined by BPA. In addition, all data provided by the Utility as part of its filing in response to data requests from BPA or from any party shall be included as part of the record supporting the ASC determined by BPA. For any jurisdictional rate proceeding in which BPA has intervened, all data received by BPA by virtue of its intervenor status shall also be included as part of the record supporting the ASC determined by BPA.

F. If BPA has not issued a report as of the last date of the review period, the ASC rate shown on the revised Appendix 1 described in section II(B) of this rule Filed by the Utility shall be the ASC from the commencement of the relevant Reimbursement Period until the date BPA issues its report. The ASC as determined by BPA shall then be the ASC rate from the date of BPA's determination until the commencement of the Utility's next Exchange Period.

IV. Change in the Average System Cost Methodology

This methodology is patterned after the ASC methodology adopted by the BPA Administrator for use in calculating the subsidy paid to participants in the residential exchange program authorized by section 5(c) of the Northwest Power Act. Whenever a consultation proceeding is initiated by BPA to modify the residential exchange ASC methodology, BPA will also initiate a consultation proceeding to modify this methodology. The consultation proceedings shall run concurrently and shall follow the same procedures. If the residential exchange ASC methodology is modified by order of the Federal Energy Regulatory Commission or a reviewing court, this methodology will also be modified to ensure that payments calculated under this methodology equal the payments that would be calculated under the residential exchange ASC methodology, except in the instances where payments under this methodology are limited by Exhibit E of the Exchange Transmission Credit Agreement to the benefits the utility would have received under the residential exchange program for its transmission system costs. Any necessary modification to this methodology shall become effective on the same day as the modification of the residential exchange ASC methodology. Should any modification to the residential exchange ASC methodology result in a refund or payment obligation under this methodology, by either BPA or a participating utility, such refund or payment obligation shall be implemented in the same manner as it is implemented under the residential exchange program.

Timeline Review Procedure—Bonneville Power Administration

Day and Event

−20—Commencement of new reimbursement period.
0—Utility files revised Appendix 1; utility mails notice of filing.
40—Deadline for data requests to utility from parties.
60—Deadline for utility to object to data request from parties.
65—Deadline to respond to data request from parties.
80—Deadline to raise issues in the utility's ASC filing (submit written challenges to costs included in the utility's appendix 1). Deadline to request party status for all persons or

entities not submitting challenges to the costs included in the utility's Appendix 1.

90—BPA mails notice of issues, list of parties, and request for comments.

120—Deadline for submission of written comments on first round issues.

135—Deadline for submitting written cross comments on first round issues. BPA mails notice of second round issues.

150—Deadline for submission of written comments of second round issues.

150—Deadline for requesting oral argument.

165—Deadline for submission of written cross comments on second round issues.

180—Deadline for presentation of oral argument.

210—Review period ends. BPA issues final determination.

Instructions

Exhibit C—Appendix 1 is the form on which a Utility participating in the ETCA 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 determined 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.

SCHEDULE 1—EXHIBIT B, APPENDIX 1

BONNEVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST MOTHODOLOGY TEST PERIOD: PLANT INVESTMENT/RATE BASE/RATE OF RETURN

[Thousands]

Functionalization	Line No. and Items			Other
	Total to be functionalized	Production	Transmission	
(1)	(2)	(3)	(4)	(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[a]				
7 Distribution plant 360–373[b]				
8 Intangible plant 301–303[j]				
9 General plant 389–399[j]				
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[a]				
17 Distribution plant[b]				
18 General plant[j]				
19 Amortization reserve 111[j]				
20 Total Depreciation and amortization				
21 Total net plant				
22 Nuclear Fuel 120.2–120.4 Less 120.5				
23 Accumulated deferred debits 186[j]				
24 Cash working Captial[k]				
25 Material and Supplies 151–157, 163[j]				
LESS				
26 Accumulated deferred investment tax credits/255[j]				
27 Accumulated deferred income taxes/281–283[l m]				
28 Other accumulated deferred credits/253, 256–257[j]				
29 Customer contributions and aid to construction/252[j]				
30 Other 106, 124, Various 1[j]				
31 Total rate base				

SCHEDULE 1—EXHIBIT B, APPENDIX 1—Continued

[Thousands]

Functionalization	Line No. and items			Other
	Total to be functionalized	Production	Transmission	
(1)	(2)	(3)	(4)	(5)
32 Times rate or return at—percent[a]				

Footnotes at end of Schedule 4.

SCHEDULE 2—EXHIBIT C, APPENDIX 1

BONNEVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST METHODOLOGY TEST PERIOD: WEIGHTED AVERAGE COST OF LONG TERM DEBT

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

Footnotes at end of Schedule 4.

SCHEDULE 3—EXHIBIT C, APPENDIX 1

BONNIVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST METHODOLOGY TEST PERIOD: EXPENSES

[Thousands]

Line No. and items	Functionalization			Other
	Total to be functionalized	Production	Transmission	
(1)	(2)	(3)	(4)	(5)
Production				
1 Fuel 501, 518, 547				
2 Purchased power 555				
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 expense				
8 Transmission 560-573 [a]				
9 Distribution 580-598 [b]				
10 Customer Accounting 901-905 [j]				
11 Customer Assistance 907-910 [j]				
Administrative and General [j] Account Number				
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 & G				
27 Total operations and maintenance				
28 Depreciation and amortization 403-407				
29 Steam Production Plant				
30 Nuclear Production Plant				
31 Hydraulic Production Plant				

SCHEDULE 3—EXHIBIT C, APPENDIX 1—Continued

[Thousands]

Line No. and items	Functionalization			Other
	Total to be functionalized	Production	Transmission	
(1)	(2)	(3)	(4)	(5)
32 Other Production Plant				
33 Transmission Plant [a]				
34 Distribution Plant [a]				
35 General Plant [a]				
36 Amortization [a]				
37 Total depreciation and amortization				
38 Taxes other than Income Taxes 408, 409.1 [a]				
39 Federal Income Tax [a]				
40 State Income Tax [a]				
41 Other Expenses [a]				
LESS				
42 Sales for Resale Rev. 447				
43 Other Operating Revenues 450–456 [a]				
44 Billing Credits [c]				
45 Total operating expenses				
46 Return from Schedule 1				
47 Other Adjustments				
48 Total cost				

Footnotes at end of Schedule 4.

SCHEDULE 3A—EXHIBIT C, APPENDIX 1

BONNEVILLE POWER ADMINISTRATION, RESIDENTIAL PURCHASE AND SALE AGREEMENT, AVERAGE SYSTEM COST METHODOLOGY LAST PERIOD: TAXES OTHER THAN INCOME TAXES

[Thousands]

Line No. and items	Functionalization			Other
	Total to be functionalized	Production	Transmission	
(1)	(2)	(3)	(4)	(5)
1 Federal—Insurance Contributions				
2 ....do.....Unemployment				
State				
3 California—Property				
4 ....do.....Unemployment				
5 Oregon—Property				
6 ....do.....Tri-Mol				
7 ....do.....Linn County				
8 ....do.....Unemployment				
9 ....do.....Regulatory Commission				
10 Washington—Property				
11 ....do.....Unemployment				
12 ....do.....Generating Tax				
13 ....do.....Pollution Control Credit				
13a ....do.....Revenue & Business				
14 Idaho—Property				
15 Montana—property				
16 ....do.....Unemployment				
17 Wyoming—Property				
18 ....do.....Unemployment				
19 Utah—Property				
20 Local—Occupation and franchise				
21 In-lieu taxes				
22 Other				
23 Total				

Note: 1. Supporting workpapers are to be attached.
2. Footnotes referenced on Schedule 3 will be relied upon in determining ASC.
Footnotes at end of Schedule 4.

SCHEDULE 3B—EXHIBIT C, APPENDIX 1

Bonneville Power Administration, Residential Purchase and Sale Agreement, Average System Cost Methodology Test Period: Other Included Items

[Thousands]

Line No. and items	Functionalization			Other
	Total to be functionalized	Production	Transmission	
(1)	(2)	(3)	(4)	(5)
Operating Revenues				
1 Sales for Resale 447				
2 1				
3 2				
4 Total				

SCHEDULE 3B—EXHIBIT C, APPENDIX 1—Continued

[Thousands]

Line No. and items	Functionalization			Other
	Total to be functionalized	Production	Transmission	
(1)	(2)	(3)	(4)	(5)
OTHER OPERATING REVENUES 450–456[1]				
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: 1. Supporting workpapers are to be attached.
2. Footnotes referenced on Schedule 3 will be relied upon in determining ASC.
Footnotes at end of Schedule 4.

SCHEDULE 4—EXHIBIT C, APPENDIX 1

Bonneville Power Administration, Residential Purchase and Sale Agreement, Average System Cost Methodology Last Period: Average System Cost

Line No. and items	Amounts
(1)	(2)
1 Contract System Costs	
2 Production Cost (from Schedule 3)	
3 Transmission Cost (from Schedule 3)	
4 Loss Excluded Load costs [f]	
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) [g]	
14 Total Net Load (MWh)	
15 Less:	
16 Excluded load (MWh) [f]	
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:

[a] Transmission plant and the associated cost to be used in the calculation of 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 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.

[b] 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.

[c] 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.

[d] The overall rate of return to be applied to a utility's Reimbursement 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 lessor 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.

[e] 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.

[f] 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 kilowatthours 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 kilowatthour 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 Reimbursement Period.

(4) Any kilowatthours 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 that the transmission and generation cost included in the retail rate charged the New Large Single Load.

[g] 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 transformers, secondary distribution facilities and service drops.

[h] Cash Working Capital greater than ⅛th 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.

[1] 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 costs 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(i)(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.

[2] 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 organizations 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 I 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) Be 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	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 ratios of transmission and distribution gross plant excluding general plant.
393 (stores equipment).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
394 (tools, shop and garage equipment).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
395 (laboratory equipment).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
396 (power operated equipment).	Functionalize on the ratios of transmission and distribution gross plant excluding general plant.
397 (communication equipment).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
398 (miscellaneous equipment).	Functionalize to distribution/other.
399 (other tangible property).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
301–303 (intangible plant).	Functionalize on the ratios of production, transmission and distribution gross plant excluding general plant.
114 (acquisition adjustment).	Labor ratios.
105 (plant held for future use).	Functionalize on the ratios 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 credit).	Functionalize to distribution/other.
257 (unamortized gain on reacquired debt).	Functionalize on the ratios 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.
154–157, 163 (materials and supplies).	Functionalize on the ratios of transmission and distribution gross plant excluding general plant.
106 (completed construction not classified).	Functionalize on the ratios 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 and general salaries).	Labor ratios.
921 (office supplies and 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.

Account	Functionalization method
925 (injuries and damages).	Labor ratios.
926 (employee pensions and benefits).	Labor ratios.
927 (franchise requirements).	Functionalize to distribution/other.
928 (regulatory comm. fees and 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:

Account	Functionalized method
107, 120.1 (CWIP).	Functionalize to distribution/other.
108 (PIS depreciation reserve).	The same functionalization used for account 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 account 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.

[FR Doc. 84–30084 Filed 11–14–84; 8:45 am]
BILLING CODE 6450–01–M

[Docket No. CAS-RM-81-130]

Residential Conservation Service Program; Utility Waiver Petition

AGENCY: Department of Energy.

ACTION: Notice of Utility Waiver Petition.

SUMMARY: In accordance with the provisions of the National Energy Conservation Policy Act (NECPA), the Department of Energy (DOE) has received a petition from the United Illuminating Company for a waiver of the prohibitions against supplying or installing residential energy conservation measures. Granting the waiver would allow United Illuminating Company to install caulking, weatherstripping, duct and pipe insulation for its residential customers. DOE will consider written comments in reviewing the waiver petition.

DATE: Written comments must be received by December 17, 1984.

ADDRESS: Comments should be addressed to: Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets Branch, Room 6B–025, Docket No. CAS–RM–81–130, 1000 Independence Avenue, SW., Washington, D.C. 20585. (202) 252–9319.

FOR FURTHER INFORMATION CONTACT:

Gina Urso, CE–115, Office of Building Energy Research and Development, Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–1650.

Daniel Ruge, GC–12, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9519.

SUPPLEMENTARY INFORMATION: As part of the Residential Conservation Service (RCS) Program, section 216(a) of the National Energy Conservation Policy Act (NECPA) (42 U.S.C. 8217(a)) prohibits public utilities from supplying or installing most residential energy conservation or renewable resource measures for their residential customers. In accordance with the provisions of section 216(e) of NECPA (42 U.S.C. 8217(e)), the Secretary of Energy may waive these prohibitions upon petition by a public utility.

The Department of Energy (DOE) has received a petition for a waiver from the United Illuminating Company (UI), of New Haven, Connecticut. UI is requesting a waiver to install caulking, weatherstripping, duct and pipe insulation for its residential customers. The company was previously granted a wavier by DOE, from the NECPA prohibition, to enable it to install water heater jackets for its residential customers.

DOE will review the UI petition in accordance with the requirements of section 216(e) of NECPA to determine if (1) the petition demonstrates that, in installing caulking, weatherstripping, duct and pipe insulation, fair and reasonable prices and rates of interest will be charged and (2) after consultation with the Federal Trade Commission (FTC), the UI program is not inconsistent with the prevention of unfair methods of competition and the prevention of unfair or deceptive acts or practices.

Accordingly, a copy of the UI petition is being sent to the FTC for review. In addition, DOE will receive public comments on the UI petition as indicated in the **"DATE"** and **"ADDRESS"** sections of this notice. Copies of the UI petition may be requested from Gina Urso at (202) 252–1650.

After reviewing the UI petition and consulting with FTC and after considering any comments received as indicated in the **"DATE"** section of this notice, the Secretary of Energy will make a final determination.

Issued in Washington, D.C., November 1, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 84–29892 Filed 11–14–84; 8:45 am]
BILLING CODE 6450–01–M

Office of Fossil Energy

National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council.

Date and Time: Wednesday, December 12, 1984, starting at 9:30 a.m.

Place: Madison Hotel, Dolley Madison Ballroom, Fifteenth and M Streets, NW., Washington, D.C.

Contact: Carolyn B. Klym, U.S. Department of Energy, Office of Oil, Gas, Shale and Coal Liquids, Mail Stop D–122, Gtn., Washington, D.C. 20545, Telephone: 301–353–2709.

Purpose of National Petroleum Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Tentative Agenda

—Call to Order by Robert A. Mosbacher, Chairman, National Petroleum Council.

—Remarks by the Honorable Donald Paul Hodel, Secretary of Energy.

—Reports of Study Committees of the National Petroleum Council.

—Proposed Final Report of the Committee on the Strategic Petroleum Reserve, Wm. C. Douce, Chairman.

—Progress Report of the Committee on U.S. Petroleum Refining, John K. McKinley, Chairman.

—Consideration of Administrative Matters.
—Discussion of Any Other Business Brought Before the National Petroleum Council.
—Public Comment—10 minute rule.
—Adjournment.

Public Participation

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Carolyn B. Klym at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on November 8, 1984.

Howard Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84–29891 Filed 11–14–84; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF85–14–000]

Air Products and Chemicals, Inc. and Browning-Ferris Industries, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 9, 1984, Air Products and Chemicals, Inc. and Browning-Ferris Industries, Inc. (Applicants) of P.O. Box 538, Allentown, Pennsylvania 18105, and P.O. Box 3151, Houston, Texas 77001, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at Red Bluff Road and State Highway 225, Pasadena, Texas. The primary energy source will be biomass in the form of commercial and municipal-type solid waste. The electric power production capacity will be 48.1 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30025 Filed 11–14–84; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. QF85–32–000]

Bennett Duval; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Bennett Duval (Applicant), of 29641 Western #401 Rancho-San Pedro, California 90732 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary..

[FR Doc. 84–30026 Filed 11–14–84; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. QF85–36–000]

Fay Wong; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Fay Wong (Applicant), of 124–126 Russ Street, San Francisco, California 94103 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30029 Filed 11–14–84; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. QF85–29–000]

General Electric Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 8, 1984.

On October 15, 1984, General Electric Company (Applicant), care of 28A, Inc., 23 East Seventh Street, Cincinnati, Ohio 45202, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's

regulations. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility is owned by and located at the General Electric Company facilities at Grove City, Pennsylvania 16531. The primary energy source for the facility will be No. 2 fuel oil. The facility will consist of four diesel engine generator sets in four test cells, waste heat recovery system will recover heat from diesel radiator jacket cooling water to heat water for space heating of the manufacturing areas. The electric power production capacity of the facility will be a full-load rating of 2.65 megawatts net of auxiliary load per diesel, totalling 10.6 megawatts and approximately 2,490,800 Btu of 160 °F hot water generated from the radiator cooling system.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30030 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-10-000]

International Paper Co.; Georgetown Mill; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 8, 1984.

On October 9, 1984, International Paper Company (Applicant), of 77 West 45 Street, New York, New York 10036, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Applicant's paper mill in Georgetown, South Carolina. The facility's primary energy sources are biomass in the forms of wood and spent pulping liquor, coal, and oil. The two new boilers are each rated at 400,000 pounds of 1,500 psig and 825 °F steam per hour and will drive two new turbine/generators rated at 65 megawatts. The existing recovery boilers each rated at 400,000 pounds of 1,000 psig and 825 °F steam drive one turbine/generator rated at 23 megawatts.

The applicant seeks to qualify as a new capacity the added 65 megawatts of installed cogeneration capacity (2 units) within the context of § 292.304(b)(1). In addition, the Applicant seeks to qualify the existing 23 MW cogeneration unit within the context of § 292.207.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30031 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-35-000]

David I. Jacobson; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 David I. Jacobson (Applicant), of 930 N. Meads Drive, Orange, California 92669 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30027 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-37-000]

Louis Louie; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Louis Louie (Applicant), of 124-126 Russ Street, San Francisco, California 94103 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30033 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-30-000]

Paul Louis; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Paul Louis (Applicant), of 124-126 Russ Street, San Francisco, California 94103 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission an are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30038 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-20-000]

Martell Cogeneration Limited Partnership; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 8, 1984.

On October 12, 1984, Martell Cogeneration Limited Partnership (Applicant) of 11911 NE. First Street, Suite 305, Bellevue, Washington 98005 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed facility will be located in Martell, California and will consist of an 18 MW steam extraction turbine generator fueled by wood waste. The facility will be designed to extract low pressure steam from the turbine for use in a lumber drying kiln.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30034 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

Pacific Lighting Energy Systems; Notice of Application for Commission Certification of Qualifying Status of a Small Power Production Facility

[Docket No. QF85-39-000]

November 8, 1984.

On October 18, 1984, Pacific Lighting Energy Systems (Applicant), of 6055 East Washington Boulevard, Suite 600, City of Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Los Angeles, California. The primary energy source will be biomass, in the form of landfill gas generated from the anaerobic digestion by methanogenic bacteria of refuse and other solid wastes. The power production capacity will be 11 megawatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30036 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-40-000]

Pacific Lighting Energy Systems; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Pacific Lighting Energy Systems (Applicant), of 6055 East Washington Boulevard, Suite 600, City of Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifiying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in East Windsor, Connecticut. The primary energy source will be biomass, in the form of landfill gas, generated from the anaerobic digestion by methanogenic bacteria of refuse and other solid wastes. The power production capacity will be 500 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Paractice and Procedure All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30037 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-34-000]

John E. Parker; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 John E. Parker (Applicant), of 2408 First Avenue, San Diego, California 92101 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30032 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-33-000]

Sir Travel Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Sir Travel Inc. (Applicant), of 1701 E. Edinger, Bldg. C-12, Santa Ana, California 92705 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30039 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-38-000]

Donald W. Sobel; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Donald W. Sobel (Applicant), of 9900 Shirley Avenue, Northridge, California 91324 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30028 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-31-000]

Somboon and Vachree Larlarb; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 18, 1984 Samboon and Vachree Larlarb, of 291 Avocado Place, Camarillo, California 93010 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 66 kilowatt wind facility is located in Alameda County, California.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30040 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-8-000]

Triad American Energy; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 8, 1984.

On October 5, 1984, Triad American Energy (Applicant) of 170 Newport Center Driver, Suite 240, Newport Beach, California 92660, submitted for filing an application for certification of a facility as a qualifying small power production

facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located in Riverside County, California and consists of 63 wind turbine generators, each having a rated capacity of 80 kW. Thus, the electric power production capacity is 5,040 kW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30042 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-140-001]

Consolidated Gas Transmission Corp.; Proposed Changes In FERC Gas Tariff

November 8, 1984.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on October 29, 1984, filed a change to its FERC Gas Tariff, Original Volume No. 1. The change, shown on Substitute First Revised Sheet No. 51, is in compliance with an October 19, 1984 letter order in this proceeding and will become effective October 1, 1984.

The October 19, 1984, letter order accepted First Revised Sheet No. 51 subject to the condition that a substitute sheet be filed to specify the "beginning date of the twelve month period for which the ratchet provision of Rate Schedule RQ will be waived." To comply with the condition, the substitute sheet sets November 1 of each year as the beginning date of the twelve-month period.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as 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 Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All petitions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30044 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-42-000, et al.]

Hydroelectric Applications (Deep River Hydro, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Declaration of Intention.

b. Project No: EL84-42-000.

c. Date Filed: June 1, 1984.

d. Applicant: Deep River Hydro.

e. Name of Project: Coleridge Hydro Project.

f. Location: On the Deep River near Coleridge, Randolph County, North Carolina.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: William H. Lee, P.O. Box 267, Saxaphaw, North Carolina 27340.

i. Comment Date: December 10, 1984.

j. Description of Project: The existing run-of-river project, which is operational, consists of: (1) A 12-foot-high and 660-foot-long concrete dam; (2) a reservoir with a surface area of 10 acres; (3) intake structures at the eastern side of the dam; (4) a 30-foot-wide and 325-foot-long concrete headrace canal; (5) a masonry powerhouse containing one 325 kW generator and two 125 kW generators totaling 575 kW; (6) a 40-foot-wide and 400-foot-long concrete tailrace canal; (7) a 12-kV transmission line; and (8) appurtenant facilities. Applicant estimates the average annual generation to be 2,500 MWh. All power will be sold to a local utility company.

The Applicant requests that the Commission investigate and determine if there is, pursuant to the Federal Power Act, section 23(b), federal jurisdiction for the project. The Applicant asserts that the Commission lacks jurisdiction for these reasons: (1) The project is not located on a navigable water of the United States; (2) does not occupy lands of the United States or utilize surplus water or water power from a government dam; and (3) has not involved any construction subsequent to 1935 that may have increased the project's head, generating capacity, or water storage capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

k. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. Type of Application: License (Over 5MW).

b. Project No.: 3865-003.

c. Date Filed: November 30, 1983.

d. Applicant: Guadalupe-Blanco River Authority.

e. Name of Project: Canyon Dam Hydroelectric Project.

f. Location: Guadalupe River, Comal County, Texas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John H. Specht, General Manager, Guadalupe-Blanco River Authority, 933 E. Court St., P.O. Box 271, Sequin, Texas 78155.

i. Comment Date: December 27, 1984.

j. Description of Project: The project would utilize the existing U.S. Corps of Engineers Canyon Dam and Reservoir and would consist of: (1) A steel liner to be installed in the existing outlet conduit; (2) a slide gate to be located 11 feet upstream of the end of the existing outlet conduit and diverting water into; (3) a new penstock 460 feet long and 7 feet in diameter leading to; (4) a new powerhouse 40 feet by 60 feet located approximately 500 feet downstream of the toe of the dam and containing two turbine/generators having a total installed capacity of 6070 kW operating at 144 feet of hydraulic head; (5) a new tailrace channel 55 feet long and 26 feet wide; (6) a new 12-mile-long 34.5-kV transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual energy production to be 25.2 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the New Braunfels Utilities Company.

This notice also consists of the following standard paragraphs: A3, A9, B, and C.

3. a. Type of Application: Major License (5MW or less).

b. Project No: 5350-001.

c. Date Filed: November 30, 1983.
d. Applicant: Tehama County Flood Control & Water Conservation District.
e. Name of Project: South Fork Battle Creek Hydro Project.
f. Location: On South Fork Battle Creek, near town of Mineral, Tehama County, California.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Lawrence A. Coleman, County Director of Water Resources, 9380 San Benito Avenue, Gerber, California 96035.
i. Comment date: December 27, 1984.
j. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 50-foot-long diversion dam at elevation 4,228 feet; (2) a 36-inch-diameter, 4,000-foot-long diversion pipeline; (3) a 36-inch-diameter, 14,000-foot-long steel penstock; (4) a powerhouse containing one generating unit with a rated capacity of 5,000 kW operating under a head of 1,220 feet; and (5) a 10.7-mile-long, 60-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 19.2 GWh to be sold to PG&E. The project cost has been estimated to be about $8.7 million. The applicant does not propose any recreational facilities as part of the project.
k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.
4 a. Type of Application: Preliminary Permit.
b. Project No.: 8312–000.
c. Date Filed: May 17, 1984.
d. Applicant: Trans Mountain Hydro Corp.
e. Name of Project: Boulder Creek Hydro Project.
f. Location: On Boulder Creek in Summit County, Colorado.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Herbert C. Young, 123 S. Paradise Rd., Golden, Colorado 80401.
i. Comment Date: December 31, 1984.
j. Description of Project: The proposed project would be located entirely on land managed by the U.S. Forest Service in Arapahoe National Forest and would consist of: (1) A small new diversion structure, about 3 feet high, constructed of boulders; (2) a new intake structure and 36-inch diameter penstock about 2,000 feet long; (3) a new powerhouse containing turbine-generator units having a total rated capacity of 400 kW; (4) a tailrace returning flow to the creek; (5) a new transmission line, about 500 feet long, connecting to an existing power grid; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1,400,000 kWh. Project energy will be sold to the Public Service Company of Colorado.
k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.
l. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $80,000.
5 a. Type of Application: Preliminary Permit.
b. Project No.: 8329–000.
c. Date Filed: June 1, 1984.
d. Applicant: Southwestern Water Conservation District of Colorado.
e. Name of Project: Dolores Pumped-Storage Project.
f. Location: On Plateau Creek in Montezuma County, Colorado.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Frank E. (Sam) Maynes, Attorney, P.O. Box 2717, Durango, Colorado 81301.
i. Comment Date: December 28, 1984.
j. Description of Project: The proposed pumped-storage project would be located in the San Juan National Forest and would consist of: (1) A 15,500 acre-foot forebay, at 8,018 feet m.s.l., formed by (2) a 6,200-foot long, 113-foot high dam and a 700-foot long, 20-foot high dike—both of earthfill construction with provision for a 15,500 cfs emergency spillway; (3) an intake structure and two penstocks, each 21 feet in diameter and 5,340 feet in length, with horizontal and vertical alignments leading to (4) an underground powerplant containing two 500 MW pump-turbines for a total rated capacity of 1,000 MW; (5) two tailrace tunnels, each 38 feet in diameter and 850 feet in length, connecting to (6) a 17,000 acre-foot afterbay, at 7,245 feet m.s.l., formed by (7) an 800-foot long, 240-foot high concrete arch dam with provision for a 22,000 cfs spillway; (8) two 345-kV transmission lines, each 6½ miles long; and (9) appurtenant facilities. The Applicant estimates that the average annual energy output would be 800 million kWh. Energy would be marketed through various public and private utilities. Feasibility studies will be conducted in cooperation with the U.S. Bureau of Reclamation.
k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.
l. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $700,000.
6 a. Type of Application: Preliminary Permit.
b. Project No: 8361–000.
c. Date Filed: June 11, 1984.
d. Applicant: Olsen Power Project, Inc.
e. Name of Project: Olsen Power Project.
f. Location: On Old Cow Creek in Shasta County, California.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Fred G. Castagna, 2576 Hartnell Avenue, Redding, California 96002–2319.
i. Comment Date: December 26, 1984.
j. Description of Project: The proposed project would consist of: (1) A 12-foot-high diversion dam at elevation 2,276 feet; (2) a 48-inch-diameter, 5,980-foot-long diversion conduit; (3) a 48-inch-diameter, 9,580-foot-long penstock; (4) a powerhouse with a total installed capacity of 4,400 kW; and (5) a 60-kV, 2-mile-long transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line. The proposed project would be located partially on United States lands administered by the U.S. Bureau of Land Management.
k. Purpose of Project: A preliminary permit if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $227,000. No new roads would be constructed to conduct these studies.
The estimated 13 million KWh generated annually by the project would be sold to PG&E.
l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.
7 a. Type of Application: Preliminary Permit.

b. Project No: 8370–000.
c. Date Filed: June 18, 1984.
d. Applicant: Energy Gap, Inc.
e. Name of Project: Kootenai Creek Hydro Project.
f. Location: On Kootenai Creek in Ravalli County, Montana.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Tim Jones, Hydrodesign Ltd., P.O. Box 2465, Twin Falls, Idaho 83303.
i. Comment Date: December 26, 1984.
j. Description of Project: The proposed project would be located in the Bitterroot National Forest and would consist of: (1) A new intake structure in the left creek bank; (2) a new 4-foot-diameter penstock approximately 4,750 feet long; (3) a new powerhouse containing 3 turbine-generator units having a total rated capacity of 1,836 kW; (4) a tailrace returning flow to the creek; (5) a new transmission line, about 7,000 feet long, connecting to an existing Montana Power Company line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 6,860,000 kWh. Project energy would be sold to the Montana Power Company.
k. This notice also consists of the following standard paragraphs, A6, A7, A9, B, C and D2.
l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $35,000.
8 a. Type of Application: Preliminary Permit.
b. Project No: 8371–000.
c. Date Filed: June 18, 1984.
d. Applicant: Mr. Geoffrey Shadroui.
e. Name of Project: East Bethel.
f. Location: Near the Town of East Bethel, on the White River in Windsor County, Vermont.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Geoffrey Shadroui, 121 Maple Ave., Barre, Vermont 05641.
i. Comment Date: December 31, 1984.
j. Description of Project: The proposed project would consist of: (1) an existing 9-foot-high, 60-foot-long concrete dam owned by Mr. Robert Hyde of East Bethel, Vermont; (2) an existing reservoir having a storage capacity of 3 acre-feet and a normal maximum surface elevation of 530 feet m.s.l.; (3) a proposed 45-foot-long, 5-foot-diameter steel penstock; (4) a proposed powerhouse which will contain two generating units having a total rated capacity of 90 kW; (5) three proposed 300-foot-long, 480 volt, transmission lines which will interconnect with lines owned by Central Vermont Public Service Corporation; and (6) appurtenant facilities. The applicant estimates that the average annual energy output would be 330,000 kWh.
k. Purpose of Project: The most likely market for the energy derived from the proposed project would be Central Vermont Public Service Corporation.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.
m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $3,000.
9a. Type of Application: Preliminary Permit.
b. Project No: 8378–000.
c. Date Filed: June 21, 1984.
d. Applicant: Energy Gap, Inc.
e. Name of Project: Sweeney Creek Hydro Project.
f. Location: On Sweeney Creek in Ravalli County, Montana.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Tim Jones, Hydrodesign Ltd., P.O. Box 2465, Twin Falls, Idaho 83303.
i. Comment Date: December 26, 1984.
j. Description of Project: The proposed project would be located in the Bitterroot National Forest and would consist of: (1) A new intake structure in the left creek bank; (2) a new 3-foot-diameter penstock approximately 11,360 feet long; (3) a new powerhouse containing 1 turbine-generator unit rated at 3,150 kW; (4) a tailrace returning flow to the creek; (5) a new transmission line, about 11,000 feet long, connecting to an existing Montana Power Company line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 21,772,000 kWh. Project energy would be sold to the Montana Power Company.
k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.
l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $35,000.
10 a. Type of Application: Preliminary Permit.
b. Project No: 8407–000.
c. Date Filed: July 2, 1984.
d. Applicant: Frank O. Johnson.
e. Name of Project: Cascade Hydro.
f. Location: In Okanogan National Forest, on South Creek, a tributary of the Twisp River, near the Town of Twisp, in Okanogan County, Washington.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Contact Person: Frank O. Johnson, P.O. Box 66492, Seattle, Washington 98166.
i. Comment Date: December 31, 1984.
j. Description of Project: The proposed project would consist of: (1) A grated intake at elevation 3520 feet; (2) a 4000-foot-long, 42-inch-diameter penstock; (3) a powerhouse containing generating equipment with a capacity of 1000 kW and an average annual generation of 7,560 MWh; and (4) an 8.5-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $5,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The project power would be sold to Okanogan County Electric Co-op.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.
11 a. Type of Application: Small Conduit Exemption.
b. Project No.: 8438–000.
c. Date Filed: July 16, 1984.
d. Applicant: Schaffner Power Company.

e. Name of Project: Schaffner Hydro.

f. Location: Irrigation Conduit on West Fork of Sandy Creek, near the Town of Salmon, in Lemhi County, Idaho.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 & 2708 as amended).

h. Contact Person: Mr. Henry E. Schaffner, Schaffner Power Company, Rt. 1 Box 33, Salmon, Idaho 83467.

i. Comment Date: December 31, 1984.

j. Description of Project: The proposed project would utilize an irrigation conduit that is presently under construction and would consist of a concrete powerhouse containing a single generating unit with a capacity of 250 kW and an average annual generation of 1,750 MWh.

k. Purpose of Project: The project power would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 8464–000.

c. Date Filed: July 25, 1984.

d. Applicant: Shawano Hydro Associates.

e. Name of Project: Hayman Falls Hydropower.

f. Location: On the Embarrass River in Shawano County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: David M. Coombe, 410 Severn Ave., Suite 409, Annapolis, Maryland 21403.

i. Comment Date: December 28, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam, approximately 150-feet long and 13-feet high; (2) a reservoir with approximately 79.5 acres of water surface at normal water surface elevation of 881-feet, m.s.l.; (3) an existing intake structure; (4) a new steel penstock, 96-inches in diameter and about 1320-feet long; (5) an existing concrete and block powerhouse; approximately 40-feet by 25-feet, which will house one new turbine-generating unit with an installed capacity of 500 kW; (6) an existing tailrace approximately 800-feet long; (7) a proposed transmission line about ¾ mile long, rated at 12.4 kV; and (8) appurtenant facilities. Applicant estimates that the average annual energy generation would be 2,700,000 kWh. The owner of the dam is the County of Shawano, Wisconsin.

k. Purpose of Project: The applicant anticipates that project power will be sold to the Wisconsin Electric Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $30,000.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 8524–000.

c. Date Filed: August 15, 1984.

d. Applicant: Larry J. Hellhake.

e. Name of Project: Fall Creek.

f. Location: In Payette National Forest, on Fall Creek, a tributary to Payette Lake, near the Town of McCall, in Valley County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Contact Person: Larry J. Hellhake, 809 No. Liberty Road, Boise, Idaho 83704.

i. Comment Date: December 28, 1984.

j. Description of Project: The proposed project would consist of: (1) A 2-foot-high check dam at elevation 6110 feet; (2) a 9,400-foot-long, 26-inch-diameter buried steel penstock; (3) a powerhouse containing a single generating unit with a capacity of 3,900 kW and an average annual generation of 7,000 MWh; and (4) a 0.25-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $10,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The project power would be sold to the Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

14 a. Type of Application: Preliminary Permit.

b. Project No: 8525–000.

c. Date Filed: August 15, 1984.

d. Applicant: Larry J. Hellhake.

e. Name of Project: Boulder Creek.

f. Location: In Payette National Forest, on Boulder Creek, a tributary of Lake Fork Creek, near the Town of McCall, in Valley County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Larry J. Hellhake, 809 No. Liberty Road, Boise, Idaho 83704.

i. Comment Date: December 28, 1984.

j. Description of Project: The proposed project would consist of: (1) A 2-foot-high check dam at elevation 6,240 feet; (2) a 16,000-foot-long, 28-inch-diameter buried steel penstock; (3) a powerhouse containing a single generating unit with a capacity of 4,500 kW and an average annual generation of 7,800 MWh; and (4) a 1-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $10,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The project power would be sold to the Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

15 a. Type of Application: Preliminary Permit.

b. Project No: 8531–000.

c. Date Filed: August 17, 1984.

d. Applicant: SHA Development Company.

e. Name of Project: Albion Project.

f. Location: On the Blackstone River in Providence County, Rhode Island.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David M. Coombe, Synergics, Inc., 410 Severan Avenue, Suite 409, Annapolis, Maryland 21403.

i. Comment Date: December 27, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 300-foot-long, 25-foot-high concrete rollaway dam; (2) a reservoir with a surface area of 18 acres, a storage capacity of 235 acre-feet, and a normal water surface elevation of 87.7 feet m.s.l.; (3) an existing 1250-foot-long, 140-foot-wide headrace; (4) a proposed powerhouse containing two generating units with a total installed capacity of 900 kW; (5) an existing tailrace; (6) a new 13.2-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the annual generation would be 3,660,000 kWh. The dam and existing project facilities are owned by American Tourister Inc.

k. Purpose of Project: All project power generated would be sold to the Blackstone Valley Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $30,000.

16 a. Type of Application: Conduit Exemption.

b. Project No.: 8533–000.

c. Date Filed: August 17, 1984.

d. Applicant: Rock Creek Water District.

e. Name of Project: Rock Creek.

f. Location: Rock Creek Ditch-Conduit, near Stockton, in Calaveras County, California.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. Bruce Orvis, Rock Creek Water District, Star Route, Farmington, California 95230.

i. Comment Date: December 28, 1984.

j. Description of Project: The proposed project would utilize irrigation flows released at Rock Creek Water District's Salt Springs Valley Reservoir into the Rock Creek Ditch-Conduit and would consist of a powerhouse located at the mouth of the conduit at the southeast corner of R11E, T2N, S31, Bachelor Valley Quadrangle, containing a single impulse turbine-generator unit with an installed capacity of 700 kW and producing an estimated average annual generation of 3.0 GWh. A 3-mile-long transmission line would interconnect the project to an existing 17–kV line. Project power would be sold to a private or public utility. Reservoir waters would not be released solely for the generation of electricitiy.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

17 a. Type of Application: Preliminary Permit.

b. Project No. 8586–000.

c. Date Filed: September 10, 1984.

d. Applicant: Golden Wheel Hydro, Ltd.

e. Name of Project: Golden Wheel Hydro.

f. Location: On Rock Creek within Klamath National Forest in Siskiyou County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, California 95814.

i. Comment Date: December 27, 1984.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high weir at elevation 1,068 feet; (2) a 2,800-foot-long pipeline; (3) a 48-inch-diameter, 450-foot-long penstock; (4) a powerhouse, containing generating units with a total installed capacity of 4,600 kW, operating under 288 feet of head; and (5) a 12.5-kV, 11-mile-long transmission line to an existing Pacific Gas and Electric Company (PG&E) line.

k. Purpose of Project: The estimated annual generation of 30.2 million kWh would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C & D2.

18 a. Type of Application: Preliminary Permit.

b. Project No: 8590–000.

c. Date Filed: September 10, 1984.

d. Applicant: Buck Rock Hydro, Ltd.

e. Name of Project: Buck Rock Hydro.

f. Location: On Willow Creek within Mendocino National Forest in Tehama County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dr. Roy McDonald, 1121 L St., Suite 1000, Sacramento, California 95814.

i. Comment Date: December 28, 1984.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high weir at elevation 3,360 feet; (2) a 16,000-foot-long, 52-inch-diameter pipeline; (3) a 2,000-foot-long, 40-inch-diameter penstock; (4) a powerhouse, containing generating units with total installed capacity of 5,000 kW, operating under a head of 925 feet; and (5) a 12.5-kV, 13-mile-long transmission line to an existing Pacific Gas and Electric Company (PG&E) line.

k. Purpose of Project: The estimated annual generation of 20.6 million kWh would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit

exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit application, on notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either: (1) A preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accorance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20425. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub.

L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accorance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 8, 1984.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30054 Filed 11–14–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL84–15–000]

Kentucky Utilities Co.; Order Denying Request for Dismissal of Complaint, Establishing Hearing Procedures, and Denying Requests for Expedition and for Limitation of the Proceeding

Issued: November 7, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On May 24, 1984, the Cities of Barbourville, Bardstown, Benham, Corbin, Falmouth, Madisonville, and Providence, Kentucky, the Electric & Water Plant Board of Frankfort, Kentucky, and Berea College (Municipals) filed a complaint requesting that the Commission institute an expedited investigation of the coal fuel costs charged by Kentucky Utilities Company (KU) through its fuel adjustment clause. The Municipals suggest that the Commission either establish a second phase in the company's pending rate docket [1] or institute a separate proceeding to investigate and remedy the alleged fuel clause overcharges.

The Municipals state that they are full requirements customers of KU and represent approximately 9% of its load. The Municipals further state that approximately 99% of the company's electric generation is produced from coal-fired units. In alleging that some of the company's actions in procuring coal were imprudent, the Municipals specifically challenge KU's procurement activities related to long-term coal supply contracts for its Ghent generating station.[2] The Municipals request: (1) That the Commission institute an investigation and provide for an expedited hearing on KU's coal fuel costs; (2) that a portion of the company's costs incurred under its long-term supply agreements be found to be unjust, unreasonable, and imprudently incurred; and (3) that the company be ordered to reduce its fuel cost adjustment clause charges to eliminate all costs found not to be just, reasonable, and prudently incurred and to provide refunds (with interest) of unreasonably charged fuel costs.

Notice of the filing was published in the **Federal Register**, with comments due on or before July 5, 1984.[3] On July 3, 1984, the Kentucky Public Service Commission (KPSC) filed a notice of intervention, stating no position with respect to the issues raised by the complaint and raising no other substantive issues. On July 5, 1984, the City of Paris, Kentucky (Paris) filed a motion to intervene in support of the Municipals' request for an investigation.[4]

On July 13, 1984.[5] KU filed its answer to the complaint, which denies the Municipals' allegations, and alternatively requests dismissal of the complaint or limitation of the scope of the proceeding. The company disputes the complaint on three grounds. First, KU alleges that all of the challenged actions in procuring coal were prudent, in light of the circumstances, and that its fuel charges are just and reasonable. Second, the company alleges that its

[1] An uncontested settlement of the base rate levels in Docket No. ER83–656–000 was approved by the Commission by letter order issued on May 29, 1984. 27 FERC ¶ 61,395. According to the Municipals, although issues related to the impact of KU's coal costs on its wholesale base rates have been settled, the settlement expressly reserved the fuel clause overcharge issues.

[2] A 1976 contract, superseded by a 1983 agreement, provided for River Processing, Inc. to supply low-sulfur coal for KU's Ghent Unit No. 2 for a 15-year period. In a 1978 contract, amended in 1982, South East Coal Company agreed to supply coal for the Ghent Unit No. 3 for 12½ years.

[3] 49 FR 24173 (June 12, 1984).

[4] Paris is a partial requirements customer of KU.

[5] By letter of the Secretary, KU's answer was due on July 6, 1984. However, on July 5, 1984, the company filed a motion for an extension of time until July 13, 1984, to file its answer. This motion was not opposed and we shall grant KU its requested extension.

coal costs have been fully investigated and impliedly approved: (1) By the Commission's accounting staff during audits; (2) by the Commission during an investigation of practices under automatic adjustment clauses in Docket No. IN79–6; (3) by the Commission during its general rate increase investigations of the company over the last six years in Docket Nos. ER78–417, *et al.*, ER81–341–000, *et al.*, ER82–673–000, *et al.*, and ER83–656–000, *et al.*, and (4) by the KPSC during its biannual investigations of the company's fuel adjustment clause charges. Third, in support of its alternative request that the Commission limit any investigation to post-January 1, 1982 events, KU asserts that the Municipals are guilty of laches, that the company has been harmed due to the fact that the quality of its evidence has deteriorated over time, and that typical statutes of limitations require that negligence claims be brought within two to four years.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely notice and motion to intervene serve to make the KPSC and Paris parties to this proceeding.

In light of the issues raised in the complaint, we shall deny KU's request for dismissal and set for hearing the matter of KU's coal-related practices and charges under its fuel adjustment clause. As we have stated previously, in balancing the needs of consumer protection against the utility's need for protection from unpredictable fuel cost increases, any inequities resulting from fuel adjustment clauses "should be discovered through surveillance and can be remedied through complaint proceedings." *New England Power Company*, 48 FPC 899, 904 (1972). This approach was codified by the Congress when it added section 205(f)(3) to the Federal Power Act to provide a complaint procedure specifically directed at automatic fuel clauses. In this case, we believe that the complaint presents reasonable grounds for further investigation of KU's fuel adjustment clause charges.

The allegations in both the complaint and the company's answer raise numerous questions of fact best left to determination after an evidentiary record is fully developed. In this regard, we do not agree with KU's assertion that coal costs already passed through KU's fuel adjustment clause have been fully investigated and implicitly approved. We note that fuel adjustment clauses are not routinely examined in regulatory proceedings. *See Public Service Company of New Hampshire*, Opinion No. 37, 6 FERC ¶61,299 (1979); *New England Power Co., supra; Electric Cooperatives of Kansas*, 14 FERC ¶ 61,176 (1981). Furthermore, Commission staff audits do not preclude further examination of the justness and reasonableness of items included in Account No. 151 (Fuel Stock).[6] Regardless of whether the KPSC has ruled on the justness, reasonableness, or prudence of the company's coal costs, this Commission is not bound by such a decision, although it might be relevant to the company's case, depending on what the KPSC found.

In addition, we disagree with the company's contention that the Commission has found that there is no basis for revision of KU's charges under the fuel adjustment clause after the periodic investigations conducted pursuant to section 205(f)(2) of the Federal Power Act. Section 205(f)(2) requires the Commission to review the practices of individual public utilities under automatic adjustment clauses. Beginning in 1979, in Docket No. IN79–6, we instituted a general review of these practices. 7 FERC ¶ 61,090. The Commission's PURPA reviews of utility practices under automatic adjustment clauses were required to insure efficient use of resources. These biennial reviews of all jurisdictional electric utilities are conducted to determine if there are apparent problems in a utility's fuel procurement program which may justify further Commission action. To date no separate action has been instituted regarding KU's fuel practices as a result of these reviews. This cannot be construed as final Commission approval of KU's fuel practices, however. The existence of a biennial review does not preclude interested parties from bringing new information to light and requesting a formal investigation of these practices at any time. In fact, section 205(f)(3)(B) specifically provides that a hearing on automatic adjustment clauses may be instituted either by the Commission on its own motion or "upon complaint."

Finally, despite the span of time covered by the complaint, we are not persuaded to limit the scope of the investigation, as requested by the company. From a review of the pleadings, we cannot say that the Municipals' delay in prosecuting their complaint is clearly unreasonable or that a hearing which addresses the full time frame encompassed by KU's long-term supply contracts for its Ghent station would unduly prejudice the company. Although KU asserts that key witnesses and pertinent files are no longer available, that point is not dispositive here, since evidence of the events and management decisions relating to execution of the long-term contracts would evidently be relevant to this proceeding regardless of its scope. The proper reach of any remedy, if any is ultimately found to be appropriate, can be argued and decided if and when that question actually arises. At the same time, we perceive no extraordinary circumstances which would cause us to formally expedite this proceeding as requested by the Municipals. The disputed facts are numerous and cover a long period of time. Further, the Municipals have alleged no irreparable harm which might necessitate an expedited proceeding. However, while we shall leave to the discretion of the presiding administrative law judge designated in this proceeding the discretion to establish any procedural dates deemed appropriate, we hereby direct the law judge to report back to us on the status of this proceeding, no later than nine months from the date of this order, to ensure that the case is moving at a reasonably rapid pace.

The Commission orders: (A) KU's motion for an extension of time in which to file its answer is hereby granted.

(B) KU's request for dismissal of the Municipals' complaint is hereby denied.

(C) 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 KU's coal fuel charges under its fuel cost adjustment clause.

(D) KU's request that the scope of the investigation and hearing ordered above be limited to events occuring after January 1, 1982, is hereby denied.

(E) The Municipals' request for formal expedition of this proceeding is hereby denied.

(F) 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 of the issuance of this order in

[6] Audit reports by the Commission staff clearly state that they constitute a "selective examination" of accounting policies and practices and that they are "without prejudice to the right to require hereafter such adjustments as may be considered proper from additional information which may come to the attention of the Commission."

a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., 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.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30020 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-86-003]

Locust Ridge Gas Co.; Compliance Filing

November 8, 1984.

Take notice that on November 2, 1984, Locust Ridge Gas Company (Locust Ridge) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 3:

Submitted As Alternate Tariff Sheets "A":

To Original Volume No. 1:

Rate Schedule G-1: Twelfth Revised Sheet No. 1A effective September 1, 1984.

Rate Schedule T-1: Third Revised Sheet No. 27 effective October 25, 1984.

To Original Volume No. 3: Nineteenth Revised Sheet No. 1A effective September 1, 1984.

submitted As Alternate Tariff Sheets "B":

To Original Volume No. 1:

Rate Schedule G-1: Twelfth Revised Sheet No. 1A effective Ju1y 2, 1984.

Rate Schedule T-1: Third Revised Sheet No. 27 effective July 2, 1984.

To Original Volume No. 3: Nineteenth Revised Sheet No. 1A effective July 2, 1984.

Locust Ridge requests that the Federal Energy Regulatory Commission (Commission) accept the Alternate "B" tariff sheets as being in compliance with the Commission's order of October 15, 1984, with an effective date of July 2, 1984. Locust Ridge asserts that there is no issue of retroactive ratemaking involved with the acceptance of the Alternate "B" tariff sheets, since these tariff sheets reflect a reduction below the level originally filed. If the Alternate Tariff Sheets "B" are not accepted, Locust Ridge does not by this filing request, and it expressly disclaims any such request or motion, that the Alternate "A" Tariff Sheets be placed into effect.

Locust Ridge states that it has furnished copies of these tariff sheets to all its customers affected by such tariffs.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30045 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TAB85-1-54-000 and TA85-1-54-001]

Louisiana-Nevada Transit Co.; Proposed Changes in FERC Gas Tariff

November 8, 1984.

Take notice that on November 1, 1984, Louisiana-Nevada Transit Company (Louisiana-Nevada) tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1: Sixth Revised Sheet No. 4, superseding Fifth Revised Sheet No. 4.

The proposed changes reflect a purchased gas cost adjustment under Louisiana-Nevada's Rate Schedules G-1 and X-2. The changes provide for a total adjustment of 108.21 cents per Mcf including a deferred gas cost adjustment of 20.06 cents per Mcf, to amortize a deferrred balance, and a cumulative cost of gas adjustment of 88.15 cents per Mcf. An effective date of December 1, 1984, is requested.

Louisiana-Nevada states that copies of this filing were served on its jurisdictional customers and the Arkansas and Louisiana Public Service Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 15, 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 whishing 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. 30046 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-55-000 and TA85-1-55-001]

Mountain Fuel Resources, Inc.; Rate Change

November 8, 1984.

Take notice that on November 1, 1984, Mountain Fuel Resources, Inc. (Resources) tendered for filing and acceptance First Revised Sheet Nos. 13, 14, 58 through 60 and 62 to its FERC Gas Tariff, First Revised Volume No. 1. Resources proposes that these sheets be effective December 1, 1984.

Sheet Nos. 13 and 14 were filed pursuant to Resources' Purchased Gas Cost Adjustment Provision (PGCA) and Part 154 of this Commission's Regulations. Sheet No. 13 adjusts the rates under Resources' Rate Schedule CD-1 for changes in the cost of purchased gas and for the amortization of the August 31, 1984, balance in Resources' 6-month deferral subaccount of its Account No. 191. Resources has proposed to decrease the Base Cost of Purchased Gas as Adjusted under Rate Schedule CD-1 in the amount of $.0536/Dth and to change its Unrecovered Purchased Gas Cost Adjustment from Rate Schedule CD-1 of $.08512/Dth. In accordance with Section 154.111(a)(3)(i) of the Commission's Regulations, Sheet No. 13 is modified so that the gas cost component of the commodity charge under Rate Schedule CD-1 is stated separately. Sheet No. 14 reflects $0.00 projected incremental pricing for the December 1984 through May 1985 PGA period. Resources states that its only current sale-for-resale customer, Mountain Fuel Supply Company, has reported $0.00 Maximum Surcharge Absorption Capability due to the implementation of incremental pricing at the state level.

Resources states that Sheet Nos. 59, 60, and 62 reflect revisions to the method of calculating unrecovered purchased gas costs in its PGCA. Resources asserts that these revisions

were necessary due to the restatement of Resources' Base Cost of Purchased Gas as Adjusted, which prior to this filing included both demand and commodity gas costs.

In its filing, Resources has proposed to change the Adjustment Base Period in its PGCA from *three* months prior to the effective date of the rate adjustment to *four* months prior to the effective date of the rate adjustment. Resources states that the proposed change would be implemented with its next PGA filing.

Resources has requested waiver of § 154.38(d)(4)(v) of the Commission's Regulations so that it may be permitted to submit actual data set forth in FERC Form No. 542–PGA by field total rather than by each producer within producing fields. Resources has also requested waiver of § 154.38(d)(4)(iv)(a) of the Commission's Regulations and § 12.3(b) of its PGCA if the Commission deems such waivers necessary to permit it to reflect its successful efforts in reducing its purchased gas costs. Further, Resources has requested waiver of § 282.602(d)(2)(i) of the Commission's Regulations so that it may be permitted to exclude a supplemental analysis of projected incremental acquisition costs from its PGA filing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commisison 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. 84–30047 Filed 11–14–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–18–000]

Natural Gas Pipeline Company of America; Petition for Authority To Institute Special Billing Procedure and for Waiver of PGA Procedures

November 8, 1984.

Take notice that on November 5, 1984, Natural Gas Pipeline Company of America (Natural) transmitted for filing its Petition For Authority To Institute Special Billing Procedure And For Waiver Of PGA Procedures. Natural states that the purpose of the special billing procedure is to recover from its customers Order No. 94 "production-related costs" made to producers through December 31, 1984, under a special, one-time, lump sum billing.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30048 Filed 11–14–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–20–000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Application

November 8, 1984.

Take notice that on October 10, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–20–000, an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing (1) the delivery of natural gas to Cabot Corporation (Cabot) for processing in Lea County, New Mexico, and (2) the construction of minor facilities necessary to effectuate such deliveries of natural gas, all in Lea County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is indicated that Northern and Cabot have entered into a gas processing agreement dated July 10, 1984, as amended, whereby Northern has agreed to deliver to Cabot up to 15,000 Mcf per day of its Eddy County gas reserves, up to 15,000 Mcf per day of its Buckeye gas reserves, and up to 40,000 Mcf per day of its Hobbs residue gas at the interconnection between Northern's mainline and Cabot's gathering system located in Section 28, T18S, R36E, Lea County, New Mexico. Northern states that Cabot would then process the gas at its processing plant and the residue gas volumes would be delivered to Northern at the discharge side of the Cabot plant located in Section 21, T18S, R36E, Lea County, New Mexico.

Northern states the following: During peak periods when the combined total volumes from the Eddy County and Buckeye Systems exceed 30,000 Mcf of gas per day, Cabot has agreed to use its best efforts to accept all volumes for processing during such peak periods. Further, Northern and Cabot agree that in the event, on a daily basis, volumes from the Eddy County and Buckeye Systems exceed 31.5 MMcf per day, Northern would pay Cabot a compression fee of 8.0 cents per Mcf on the volumes in excess of 31.5 MMcf per day.

Northern also states the following: As consideration for processing Nothern's Eddy County and Buckeye gas, Cabot would receive the following compensation:

(a) Cabot would be entitled to retain 100 percent of the extracted ethane provided that Cabot delivers, in the plant residue gas stream, additional Btu's to Northern at the discharge side of its processing plant in sufficient quantity to compensate Northern for all of the Btu's removed and retained by Cabot in the extracted ethane. In addition, Cabot would redeliver to Northern the total Btu's used as fuel and other miscellaneous plant losses associated with the processing, dehydration and compression service. Northern would own 100 percent of the propane and other heavier hydrocarbons extracted and would bear 100 percent of the Btu shrinkage associated therewith.

(b) Regarding liquid hydrocarbons extracted from Nothern's Hobbs residue stream, Cabot would be entitled to retain and own 75 percent of the total products extracted, provided that Cabot delivers, in the plant residue gas stream, additional Btu's to Northern in sufficient quantity to compensate Northern for the total Btu's removed and retained by Cabot attributable to such 75 percent share of the products extracted as well as the total Btu's used as fuel and other miscellaneous plant losses associated with the processing, dehydration and compression service. Northern would retain and own 25 percent of the total products extracted and would bear 100 percent of the Btu shrinkage associated with such 25 percent share.

(c) In the event that Northern is unable to process gas at Northern's

Hobbs Plant, due to plant maintenance or inability to operate due to insufficient flows, Northern and Cabot may mutually agree and arrange to send the gas to Cabot's plant for processing. If such situation should occur, Northern would be entitled to receive 25 percent of all ethane extracted from this gas with Cabot receiving 75 percent of the extracted ethane. Northern would receive 25 percent of the extracted propane and heavier hydrocarbons up to a maximum of 0.5 gallons per Mcf (GPM) extracted and 100 percent of the extracted propane and heavier hydrocarbons when extraction exceeds 0.5 GPM. Cabot would receive 75 percent of the extracted propane and heavier hydrocarbons up to a maximum of 0.5 GPM extracted and 0 percent of the extracted propane and heavier hydrocarbons when extraction exceeds 0.5 GPM. Cabot would bear all fuel and miscellaneous plant losses and would redeliver additional Btu's sufficient to equal those retained by Cabot in Cabot's respective share of the liquids or consumed as fuel, plant losses, etc.

Northern states that the processing service provided by Cabot is a firm arrangement and would be for a four-year term commencing July 10, 1984, and year to year thereafter.

Also, Northern states that it would construct minor facilities, consisting of 800 feet of 10-inch plant line, one block valve, two side valve settings, and volume/pressure control equipment to tie Northern's facilities to Cabot, at an approximate cost of $146,210 in order to facilitate the processing arrangement. The proposed facilities would be financed by cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 28, 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. 84-30035 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-7-000]

Northwest Central Pipeline Corp.; Request Under Blanket Authorization

November 8, 1984.

Take notice that on October 4, 1984, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-7-000 a request pursuant to § 157.205) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon by reclaim certain metering and appurtenant facilities in Jefferson County, Kansas, and abandon the transportation of gas through these facilities under the authorization issued in Docket No. CP82-479-000 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.

Northwest Central requests permission and approval to abandon approximately 0.1 mile of 2-inch pipeline, a 2-inch meter, regulator, and appurtenant facilities which it states were installed under budget-type authority to make a direct sale to Theracon, Inc., that such sale never commenced, and it now desires to reclaim these facilities. It is asserted that the estimated cost to reclaim these facilities is $1,480, with an estimated salvage value of $400.

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.

Kennety F. Plumb,

Secretary.

[FR Doc. 84-30049 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-13-000]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

November 7, 1984.

Take notice that Northwest Pipeline Corporation (Northwest) on October 31, 1984 tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2. The proposed changes would increase jurisdictional revenues by $57,797,602, inclusive of transportation services, annually based on the twelve-month period ending June 30, 1984, as adjusted. Northwest has proposed that the increased rates and tariff sheets filed herein be effective December 1, 1984.

Northwest states that the requested rate increase is to recover its jurisdictional cost of service for the twelve months ended June 30, 1984, as adjusted for changes through March 31, 1984. Northwest states that the principal reasons for the requested increases are:

(1) Increases in gas plant and related cost of service items; (2) increased cost of capital; (3) increased rents, transportation of gas by others, and other operation and maintenance expenses; and (4) decreased sales volumes.

Northwest states that copies of this filing were served on the Company's jurisdictional customers and affected state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.21, 385.214). All such petitions or protests should be filed on or before November

14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a 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. 84-30021 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-29-000]

Odeco Oil & Gas Co.; Application for a Certificate and for Partial Limited-Term Abandonment

November 7, 1984.

Take notice that on October 26, 1984, Odeco Oil & Gas Company (Applicant) of P.O. Box 61780, New Orleans, Louisiana 70161, filed an application pursuant to the provisions of the Natural Gas Act and the Commission's rules and regulations thereunder for a certificate of public convenience and necessity to (i) authorize sales of natural gas for resale in interstate commerce under a special marketing program, (ii) permit limited-term partial abandonment for the gas sold under the program, (iii) confer pre-granted abandonment for sales of gas actually sold under the certificate, (iv) allow transportation of the natural gas by interstate pipelines able and willing to participate, and (v) confer pre-granted abandonment for transportation services allowed under the certificate.

Sales will be made to those parties allowed to purchase under the Commission's Order issued September 26, 1984 in Docket No. CI83-269-000, *et al.*

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before November 19, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385. 214). All protests filed with the Commission will be considered by it in determining the appropirate action to be taken but will not serve to make the protestants parties to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30022 Filed 11-14-84; 8:45 am]

BILLING CODE 6716-01-M

[Docket No. RP85-20-000]

Panhandle Eastern Pipe Line Co.; Change in FERC Gas Tariff

November 8, 1984.

Take notice that on November 1, 1984, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1:

Fourth Revised Sheet No. 3-D
Third Revised Sheet Nos. 32-S and 32-T (Constituting Rate Schedule OST)
Second Revised Sheet Nos. 32-W (Constituting Rate Schedule OST-E)

Panhandle states that these sheets are filed to incorporate certain revisions in Rate Schedule OST under which it provides transportation service into its market area and to cancel Rate Schedule OST-E. These revisions reflect changes which have been previously discussed in testimony filed by Panhandle in its acceptance of the PanMark certificate as required by the Commission Order of September 26, 1984.

The revisions include 1) a change in the transport rate to include recovery, when appropriate, of the deferred portion of the PGA Rate adjustment as included in the currently effective commodity rate, 2) an elimination of the excess rate and 3) cancellation of Rate Schedule OST-E.

Panhandle proposes an effective date of November 1, 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such peititions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30050 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-16-000]

Stingray Pipeline Co.; Change in Tariff

November 7, 1984.

Take notice that on November 1, 1984 Stingray Pipeline Company (Stingray) tendered for filing First Revised Sheet No. 1, Thirteenth Revised Sheet No. 4, Second Revised Sheet No. 10, Second Revised Sheet No. 15, Sixth Revised Sheet No. 40, First Revised Sheet No. 45, Original Sheet No. 70-A, Original Sheet No. 70-B, and Third Revised Sheet No. 71 to its FERC Gas Tariff, Original Volume No. 1. An effective date of April 1, 1985 was proposed.

Stingray submits that these revised tariff sheets reflect a rate adjustment due to the reduction in Transportation Quantities of Stingray's jurisdictional customers.

Any person desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 14, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a 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. 84-30023 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-1-58-000 and TA85-1-58-001]

Texas Gas Pipe Line Corp.; Tariff Filing

November 8, 1984.

Take notice that on October 30, 1984, Texas Gas Pipe Line Corporation (Texas Gas) tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1: Thirteenth Revised Sheet No. 4a.

Texas Gas states that this sheet reflects a net increase of 17.76 cents per

Mcf at 14.65 psia in the commodity charge of its Rate Schedule G–1 and a net increase of 18.23 cents per Mcf at 15.025 psia in the commodity charge of its Rate Schedule CD–1. The proposed efffective date for this sheet is December 1, 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 15, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30051 Filed 11–14–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP85–1–000]

Transcontinental Gas Pipe Line Corp.; Complaint and Petition for Declaratory Order

Issued: November 8, 1984.

On October 23, 1984, Transcontinental Gas Pipe Line Corporation (Transco) filed a complaint with the Commission against Felmont Oil Corporation (Felmont) and Case-Pomeroy Oil Corporation (Case). Specifically Transco asks that the Commission enter an order declaring that payments by it to Felmont and Case pursuant to take or pay contract clauses would violate section 504(a)(1) of the Natural Gas Policy Act of 1978 (NGPA).[1]

Due to a decline in demand for natural gas by its customers, Transco has been unable to take delivery of the minimum amounts of gas it agreed to purchase from Felmont and Case. Under the take or pay clauses it must nevertheless pay for the deficiency. However, it is entitled to recoup take or pay deficiencies by taking gas in excess of the minimum contract amount over the succeeding five years and paying only the difference between the prepaid price and the price at the time of recoupment.

Transco alleges that the remaining recoverable gas reserves of Felmont and Case are insufficient to allow it to recoup its take or pay deficiencies. Accordingly, it contends, the take or pay payments for gas never received would mean that it had paid more than the maximum lawful price for the gas it did receive since it had already paid the maximum lawful price for that gas. Transco also contends that even if it could recoup the take or pay deficiencies, its payments pursuant to the take or pay clauses would still violate the applicable maximum lawful price. This allegedly is because take or pay payments are in essence interest free prepayments which effectively raise the price paid for the gas above the applicable price ceiling.

Any person who desires to be heard or to make any protest to the complaint should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30041 Filed 11–14–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP84–19–000]

Trunkline Gas Co.; Change in FERC Gas Tariff

November 8, 1984.

Take notice that on November 1, 1984, Trunkline Gas Company (Trunkline) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1:

Fourth Revised Sheet No. 3–A.2
Third Revised Sheet Nos. 9–BF and 9–BG
(Constituting Rate Schedule OST)
Second Revised Sheet Nos. 9–BH
(Constituting Rate Schedule OST–E)

Trunkline states that these sheets are filed to incorporated certain revisions in Rate Schedule OST under which it provides transportation service into its market area and to cancel Rate Schedule OST–E. These revisions reflect changes which have been previously discussed in testimony filed by Trunkline in its acceptance of the PanMark certificate as required by the Commission Order of September 26, 1984.

The revisions include a change in the transport rate to include recovery, when appropriate, of the deferred portion of the PGA Rate Adjustment as included in the currently effective commodity rate and cancellation of Rate Schedule OST–E.

Trunkline proposes an effective date of November 1, 1984.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 15, 1985. Protests will be considered by the Commisson in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–30052 Filed 11–14–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–67–000]

United Gas Pipe Line Co.; Application

November 8, 1984.

Take notice that on October 26, 1984, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–67–000, an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing it to implement new transportation rate schedules and related forms of service agreements to govern the terms of transportation through December 31, 1985, and for blanket authority to permit existing transportation customers, with whom United is able to negotiate a mutually beneficial agreement, to convert to the new transportation rate schedules, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to add to Volume I of its FERC Gas Tariff, two transportation rate schedules and related forms of service agreements. It is stated that Rate Schedule T would apply to transportation provided on a firm basis

[1] 15 U.S.C. 3414(a)(1).

and Rate Schedule IT would apply to interruptible transportation.

United states that changes in operations, combined with the network of interspersed high and low pressure lines, makes it impossible to trace accurately the mileage involved in transporting all volumes of gas on United's system. As a result, it is stated, the proposed rates for transportation under these rate schedules equate the rate to be charged with the distance of the transportation service as determined on the basis of a straight line connecting the point at which gas is received by United (point of receipt) with the point at which the transported gas is delivered by United (point of delivery).

United states that the new rates reflect classifications of service on the basis of 75-mile increments, with each classification referred to as a "Type." It is stated that the rate for service within each 75-mile increment is the same. United states that Type I service, and the corresponding rate, apply to transportation distances equal to or less than 75 miles; Type II applies to distances in excess of 75 miles to 150 miles; Type III applies to distances in excess of 150 miles to 225 miles; Type IV applies to distances in excess of 225 miles to 300 miles; and Type V applies to distances in excess of 300 miles. It is stated that for any service agreement which contains multiple points of receipt and/or delivery, the classification would be based upon the maximum distance of any point of receipt to any point of delivery. United states that the use of the maximum distance reflects the benefits which such flexibility accords to the shipper. It is stated that service involving a mutually beneficial "back-haul" would be classified as Type I service.

In addition to providing rates based on distance of haul, it is stated that the new rate schedules also provide rates which distinguish between firm and interruptible service. United states that the rates for firm transportation, which are to be provided under Rate Schedule T, include separate demand and commodity components. It is stated that the rate for interruptible transportation, which is to be provided under Rate Schedule IT, is a one-part commodity rate determined at a 75 percent load factor.

United asserts that the initial transportation rates for each rate schedule have been developed on a systemwide basis using the full costs allocated to transportation services under the United rate settlement apporoved in Docket No. RP82-57-000 on March 1, 1984 (26 FERC ¶ 61,287). It is stated that the new rates reflect a redesign of the transportation rates but no change in the costs allocated to transportation services. As a result, United states, such rates continue to be based on the full costs allocated to such transportation under the RP82-57-000 settlement.

It is stated that the rates for service under these rate schedules, including the classification used to develop and apply the rates, are subject to change through rate filings made effective under Section 4 of the Natural Gas Act or orders issued under section 5 of that Act. United states that if its rates are determined in a manner which makes transportation eligible for an added incentive charge (AIC) under § 157.209(f) of the Commission's Regulations, and the service to the customers would otherwise qualify for such charge, the transportation rates may include an AIC up to but not in excess of the maximum AIC permitted under such section of the Commission's Regulations.

United states that it currently provides transportation services under individual contracts which, except in the case of transportation provided under Part 157 and Part 284 of the Commission Regulations, are filed as individual rate schedules in Volume 2 of United's FERC Gas Tariff. It is asserted that, in general, the rates for transportation under those rate schedules were determined through the settlement approved March 1, 1984, in Docket No. RP82-57-000, *et al.* (26 FERC ¶ 61,287. United states that its existing customers may, however, prefer service under the new rate schedules to service under their existing rate schedules. United is requesting such blanket authorization as may be required to permit any existing customer with which United is able to negotiate a mutually beneficial agreement to convert to the new rate schedule for service rendered through December 31, 1985. United explains that such blanket authorization would apply only of there is no change in the delivery or redelivery points, volume or classification of service.

United asserts that the settlement allocates costs to existing transportation and sales services and leaves United at risk for any failure to collect those costs. Under the settlement, United states, it is entitled to retain all revenues from new transportation revenues and thus any diminution or increase in those revenues is solely for United's account. Thus, United asserts that if United and an individual customer execute a new service agreement and that customer thereby obtains a lower rate, the result may be to reduce United's revenues, but it would not affect the rate of any other sales or transportation customer.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 28, 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 United to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30043 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-1-35-000 and TA85-1-35-001]

West Texas Gas, Inc.; Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

November 7, 1984.

Take notice that on Nov. 7, 1984, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 the following tariff sheet:

First Revised Sheet No. 3a

First Revised Sheet No. 3a is being filed by WTG in order to effectuate its

Annual Purchased Gas Adjustment to be effective on October 1, 1984. The implementation of this PGA will result in a rate reduction to the Volume No. 1 customers.

Copies of the filing were served upon the Gas Utility 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 13, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intevene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-30024 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-1-57-000 and TA85-1-57-001]

Western Transmission Corp.; Proposed Changes

November 8, 1984.

Take notice that Western Transmission Corporation (Western), on October 31, 1984, tendered for filing as part of its FFC Gas Tariff, Original Volume No. 1, the following sheet:

Twenty Third Revised Sheet No. 3-A, superseding Twenty Second Revised Sheet No. 3-A.

The proposed changes would increase the monthly charges for purchased gas to Colorado Interstate Gas Company, Western's sole jurisdictional customer, pursuant to the provisions of section 18 of Western's FFC Gas Tariff, Original Volume No. 1.

The proposed effective date of the above tariff sheet is December 1, 1984.

Copies of this filing have been served upon Colorado Interstate Gas Company.

Any person desiring to be heard or to protect 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. All such motions or protests should be filed on or before "November 15, 1984. Protests will be considered by the Commission in determing the apppropriate 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. 84-30053 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59172A; TSH-FRL 2717-5]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of two applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-84-83 and TME-84-84. The test marketing conditions are described below.

EFFECTIVE DATE: November 7, 1984.

FOR FURTHER INFORMATION CONTACT: Candy Brassard, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, RM. E-202, 401 M Street SW., Washington, D.C. 20460, (202-475-8992).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-84-83 and TME-84-84. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substances produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME 84-83

Date of Receipt: September 25, 1984.

Notice of Receipt: October 5, 1984 (49 FR 39378).

Applicant: Confidential.

Chemical: (G) Polymonocyclic urethane.

Use: (G) Industrial coating having a non-dispersive use.

Production Volume: 53,700 kg.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Three months.

Commencing on: November 7, 1984.

Risk Assessment: No significant health or environmental concerns were identified. EPA estimates worker sxposure and environmental release of the test market substance will be insignificant. The test market substance will not pose an unreasonable risk of injury to health or the environment.

Public Comments: None.

TME 84-84

Date of Receipt: September 27, 1984.

Notice of Receipt: October 5, 1984 (49 FR 39378).

Applicant: Confidential.

Chemical: (G) Succinate ester.

Use: (G) Dispersive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: One year.

Commencing on: November 7, 1984.

Risk Assessment: No significant health or environmental concerns were identified. EPA estimates worker exposure and environmental release of the test market substance will be

insignificant. The test market substance will not present an unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: November 7, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-29946 Filed 11-14-84; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Federal Farm Credit Board; Meeting

AGENCY: Farm Credit Administration.

ACTION: Notice of Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Federal Farm Credit Board scheduled to be on the first Monday of December 1984, as specified in 12 CFR 604.325(a).

DATES AND TIMES: The regular meeting of the Federal Farm Credit Board is scheduled to be held in McLean, Virginia on December 3, 1984, 8:30 a.m. to 4:30 p.m.; and December 4, 1984, 8:30 a.m. to 3:00 p.m.; and to be continued at the offices of the Federal Farm Credit Banks Funding Corporation, 90 William Street, New York, New York on December 5, 1984, 8:30 to 4:30 p.m.

ADDRESS: Farm Credit Administration, Federal Board Room, 1501 Farm Credit Drive, McLean, VA 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Federal Farm Credit Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Portions Open to the Pubic:

Reports of Board Members
Governor's Report (except as noted below)
Regulation Changes
Progress Report on FCA Project 1995 - Task Forces
Office of Administration Report
Session with the Board of Directors of the Federal Farm Credit Banks Funding Corporation (New York)
a. The Status of the Farm Credit System Banks as Federally Sponsored Private Agencies
b. Financial Reporting Requirements for Farm Credit System Institutions
c. Farm Credit System Executive Compensation Policy and Plans
Other Subjects to be Determined

Portions Closed to the Public:

Executive Session(s)
Governor's Report—Litigation Update
FCA Supervisory Reports
Office of Examination and Supervision Report.

Dated: November 9, 1984.

Kenneth J. Auberger,

Acting Governor.

[FR Doc. 84-29901 Filed 11-14-84; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Arthur Winburn Saunders, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Arthur Winburn Saunders Jr.; Reno, NV.	BPH-831216CG	84-1036
B. Rita Lencioni and Robert Gregory Ordonez d/b/a R & G Broadcasting; Reno, NV.	BPH-840404IB	84-1037
C. Carrillo Broadcasting Company, a limited Partnership; Reno, NV.	BPH-840423IL	84-1038
D. Bonnie Broadcasting Corporation; Reno, NV.	BPH-840423IN	84-1039
E. Joy Denise Hill; Reno, NV.	BPH-840423IQ	84-1040
F. Meryle Karloff Holmes; Reno, NV.	BPH-840423IR	84-1041
G. Reno Broadcasters, Inc.; Reno, NV.	BPH-840423IS	84-1042

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. City Coverage, B
2. Air Hazard, C
3. Comparative, A, B, C, D, E, F, G
4. Ultimate, A, B, C, D, E, F, G

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, DC. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-29922 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Frankie Morley, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Frankie Morley; Gonzales, TX.	BPH-830923AD	84-1017
B. Patrick J. Nugent and Betty Nugent; Gonzales, TX.	BPH-831021AJD	84-1018
C. Rodney G. Ellis et al d/b/a Rodney Ellis Interests; Gonzales, TX.	BPH-840104AI	84-1019

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, DC 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84–29924 Filed 11–14–84; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Marione Elaine Martin, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant city and State	File No.	MM Docket No.
A. Marione Elaine Martin; Alva, OK.	BPH–8401004AF	84–1027
B. Women, Handicapped Americans and Minorities For Better Broadcasting, Inc., Alva, OK.	BPH–840309CH	84–1028
C. Drain Broadcasting Co.; Alva, OK.	BPH–840309CI	84–1029

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), B
2. City Coverage, B
3. Air Hazard, A, B
4. Comparative, A, B, C
5. 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, N.W., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue

1. If a final environmental impact statement is issued with respect to B (Better) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc 84–29923 Filed 11–14–84; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Oswego-Jefferson Broadcasting, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Oswego-Jefferson Broadcasting, Inc.; Pulaski, NY.	BPH–830627AF	84–1013
B. Peggy Nicholson and P. M. Shanley d.b.a. Pulaski Broadcasting; Pulaski, NY.	BPH–840119AA	84–1014

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 and B
2. Ultimate, A and B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, D.C. 20554. Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84–29925 Filed 11–14–84; 8:45 am]

BILLING CODE 6712–01–M

Telecommunications Industry Advisory Group Automated Regulatory Information Reporting Systems Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is given that the Telecommunications Industry Advisory Group, Automated Regulatory Information Reporting Systems Subcommittee, has scheduled a meeting for November 19–20, 1984. The meeting will begin at 10:00 a.m. on the first day and at 9:00 a.m. on the second day. The meetings will be conducted at Bell Communications Research, Inc., 2101 L Street, NW. (6th Floor), Washington, D.C., and will be open to the public.

I. General Administrative Matters
II. Discussion of Assignments
III. Other Business
IV. Presentation of Oral Statements
V. Adjournment

With prior approval of the chairperson, Eve Kimble, oral statements, while not favored or encouraged, may be allowed if time permits and if the chairperson determines that an oral presentation is conducive to the effective attainment of subcommittee objectives. Anyone not a member of the subcommittee and wishing to make an oral presentation should contact Eve Kimble (201) 699–6843) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communication Commissions.

[FR Doc. 84–29909 Filed 11–14–84; 8:45 am]

BILLING CODE 6712–01–M

Federal-State Joint Board; Meeting

November 8, 1984.

The Federal-State Joint Board will hold a meeting on the subject of *MTS and WATS Market Structure, CC Docket No. 78–72 and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC*

Docket No. 80–286. The Joint Board will consider recommendations concerning the allocation and recovery of NTS local exchange costs as well as measures designed to preserve universal telephone service. This Meeting is Open to the public and will commence at 2:00 P.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Additional information concerning this meeting may be obtained from Claudia Pabo, of the Common Carrier Bureau, telephone number (202) 632–9342.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–29908 Filed 11–14–84; 8:45 am]

BILLING CODE 6712–01–M

Travel Reimbursement Experiment; Quarterly Report

AGENCY: Federal Communications Commission.

ACTION: Publishing of Quarterly Report on Travel Reimbursement Experiment.

SUMMARY: In Pub. L. 97–259, the Congress authorized the Federal Communications Commission to accept reimbursement from non-government organizations for travel of employees of the Commission. The Federal Communications Commission must keep records of such travel by each event and prepare a report each quarter of all reimbursements allowed and provide copies of each quarterly report to the Senate Committee on Appropriations, House Committee on Appropriations, Senate Committee on Commerce, Science and Transportation, and the House Committee on Energy and Commerce. This must be done each quarter until September 30, 1985. In addition the Federal Communications Commission must publish each quarterly report in the **Federal Register** until September 30, 1985.

DATE: This report is for the period from July 1, 1984 through September 30, 1984.

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

FOR FURTHER INFORMATION CONTACT: Geoffrey Sherman, Office of the Managing Director, (202) 632–6900.

SUPPLEMENTARY INFORMATION: The report for the quarter ending September 30, 1984 is as follows:

Federal Communications Commission Travel Reimbursement Experiment

Summary Report

Total Number of Sponsored Events: 6.

Total Number of Sponsoring Organizations: 6.

Total Number of Commissioners/Employees Attending: 9.

Total Amount of Reimbursement:

Transportation	$2,292.40
Room	1,395.72
Board	218.02
Other Expenses	367.90
Total	4,274.04

Individual Event Reports Attached.

Sponsoring Organization (Name and Address): Association of American Railroads, 1920 L Street, N.W., Washington, D.C. 20036.

Date of the Event: August 19–22, 1984.

Description of the Event: To attend the annual meeting of the Association of American Railroads in Boston, Massachusetts.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending: 1, Supervisory Attorney Adviser, Private Radio Bureau.

Amount of Reimbursement:

Transportation	$86.00
Room	180.75
Board	29.75
Other Expenses	66.15
Total	[1] $362.65

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): King Radio Corporation, P.O. Box 3347, Lawrence, Kansas 66044.

Date of Event: August 13–17, 1984.

Description of the Event: To participate in the Land Mobile Communications Showcase in Las Vegas, Nevada.

Number of Commissioner's Attending: 0.

Number and Title of Employees Attending: 1, Chief, Private Radio Bureau.

Amount of Reimbursement:

Transportation	$396.00
Room	289.97
Board	85.03
Other Expenses	84.51
Total	[1] 855.51

[1] Reimbursement Estimated—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): Special Industrial Radio Service, Association, Inc., 1700 N. Moore Street, Suite 910, Rosslyn, Virginia 22209.

Date of the Event: September 27–28, 1984.

Description of the Event: To participate in the Special Industrial Radio Service Association annual membership meeting in Boca Raton, Florida.

Number of Commissioners Attending: 1.

Number and Title of Employees Attending: 1, Commissioner Dawson.

Amount of Reimbursement:

Transportation	$418.00
Room	125.00
Board	25.00
Other Expenses	25.00
Total	[1] $593.00

[1] *Reimbursement Estimated*—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): Satellite Communications Magazine, 6530 South Yosemite Street, Englewood, Colorado 80111.

Date of the Event: August 27–28, 1984.

Description of the Event: To participate in the Satellite Users Conference in New Orleans, Louisiana.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending: 1, Supervisory Electronics Engineer, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$254.00
Room	125.00
Board	25.00
Other Expenses	30.00
Total	[1] 434.00

[1] *Reimbursement Estimated.*—Travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): West Virginia Broadcasters Association, 2120 Weberwood Drive, South Charleston, WV 25303.

Date of the Event: August 16–17, 1984.

Description of the Event: To address the West Virginia Broadcasters Association fall meeting in White Sulphur Springs, West Virginia.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending: 1, Chief, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$98.40
Room	75.00
Board	6.00
Other Expenses	0
Total	[1] 179.40

[1] *Reimbursement Estimated.*—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): National Radio Broadcasters Association, 1705 De Sales Street, N.W., Washington, DC 20036.

Date of the Event: August 16–19, 1984.

Description of the Event: To participate in the National Radio

Broadcasters Association Convention in Los Angeles.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending: 1, Chief, Mass Media Bureau; 1, Supervisory Electronics Engineer; 1, Attorney Adviser, Mass Media Bureau; 1, Deputy General Counsel, Office of General Counsel.

Amount of Reimbursement:

Transportation	$1,040.00
Room	600.00
Board	47.24
Other Expenses	162.24
Total	[1] 1,849.48

[1] *Reimbursement Estimated*—travel processing not complete or Reimbursement billed, but not received.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-29912 Filed 11-14-84; 8:45 am]

BILLING CODE 6717-01-M

[MM Docket Nos. 84-999, et al.; Files Nos. BBCT-840503KF, et al.]

Area Christian Television, Inc., et al; Hearing Designation Order

In re applications of:

Area Christian Television, Inc..	MM Docket No. 84-999 File No. BPCT-840503KF.
Haynes Communications Co.	MM Docket No. 84-1000 File No. BPCT-840514KE.
Mississinewa Communications Corp.	MM Docket No. 84-1001 File No. BPCT-840705KG.

For Construction Permit Bloomington, Indiana.

Adopted: October 15, 1984.

Released: November 2, 1984.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Area Christian Television, Inc. (ACT), Haynes Communications Co. (Haynes), and Mississinewa Communications Corporation (Mississinewa) for authority to construct a new commerical television station on Channel 42, Bloomington, Indiana.

2. The effective radiated power, antenna heights above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contours, together with the availability of other television service of Grade B or greater intensity, 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. No determination has been reached that the tower heights and locations proposed by ACT and Mississinewa would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specificed.[1]

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 the 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Mississinewa 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.

5. The geographical coordinates in Section V–C differ from those given in Section V–G of Haynes' and Mississinewa's applications. Accordingly, each applicant will be required to submit an amendment specifying the correct geographical coordinates and any related technical exhibit which would be affected by the change in coordinates, to the presiding Administrative Law Judge within 20 days after the release of this Order.

6. Except as indicated by the issue 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 necessary. 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 the 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 Area Christian Television, Inc. and Mississinewa Communications Corporation would each 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.

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 Mississinewa Communications Corporation 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 data of the release of this Order.

10. It is further ordered, that Haynes Communications Co. and Mississinewa Communications Corporations shall each submit an amendment correcting the geographical coordinates and any related technical exhibit affected by the changes in coordinates, to the presiding Administrative Law Judge within 20 days after the release of this Order.

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 notice as requied by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[1] The Commission is not in receipt of FAA's' determinations for the towers proposed by ACT and Mississinewa.

[FR Doc. 84-29920 Filed-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-1002, et al.; File Nos. BPCT-840530 KF, et al.]

Baytown Community Broadcasting; Ltd, et al.; Hearing Designation Order

In re applications of:

Baytown Community Broadcasting, Ltd.	MM Docket No. 84-1002 File No. BPCT-840530KF.
Leonora Reyes	MM Docket No. 84-1003 File No. BPCT-840702KG.
Neil I. Sanders	MM Docket No. 84-1004 File No. BPCT-840706KH.
Villa-Reeve, Ltd	MM Docket No. 84-1005 File No. BPCT-840710KK.
Josie Montgomery, Newton Hopkins and Neicy McCoy d.b.a. Pleasant Spring Broadcasting.	MM Docket No. 84-1006 File No. BPCT-840711KH.

For Construction Permit Baytown, Texas.

Adopted: October 15, 1984.

Released: November 2, 1984.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority has before it the above-captioned mutually exclusive applications of Baytown Community Broadcasting (BCB), Leonora Reyes (Reyes), Neil I. Sanders (Sanders), Villa-Reeve Ltd. (Villa Reeve), and Josie Montgomery, Newton Hopkins and Neicy McCoy d.b.a. Pleasant Spring Broadcasting (Pleasant Spring) for authority to construct a new commercial television station on Channel 57, Baytown, Texas.

2. Section V–C, Item 10, FCC Form 301, requires that an applicant submit figures for the area and population within its predicted Grade B contour. Pleasant Spring has stated 84 square miles as its Grade B coverage area. This is obviously wrong. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and population that each applicant proposes to serve. Pleasant Spring will be required to submit an amendment showing the correct information, within 20 days after this Order is released, to the presiding Administrative Law Judge. If it is determined that there is a significant disparity between the areas and populations, the presiding Administrative Law Judge will consider it under the standard comparative issue.

3. No determination has been made that the tower heights and locations proposed by Reyes, Sanders, Villa-Reeve and Pleasant Spring would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

4. Since grant of Pleasant Spring's application would constitute a major environmental action as defined by § 1.1305(a) of the Commission's Rules, Pleasant Spring is required to submit the environmental impact information described in § 1.1311. Accordingly, Pleasant Spring will be required to file, within 20 days of the release of this Order, its environmental narrative statement with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Video Services Division, who will then proceed in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 F.C.C. 2d 229 (1979) *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 F.C.C. 2d 337 (1980).

5. Pleasant Spring failed to submit a complete contour map which is required by Question 10, Section V–C, FCC Form 301. Consequently, Pleasant Spring will be required to submit an appropriate map within 20 days of the mailing of this Order to the presiding Administrative Law Judge.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these 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 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 Leonora Reyes, Neil I. Sanders, Villa-Reeve, Ltd., and Pleasant Broadcasting would each constitute a hazard to air navigation.

(2) If a final environmental impact statement is issued with respect to Pleasant Spring Broadcasting which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment;

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by § 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

(3) To determine which of the proposals would, on a comparative basis, best serve 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 Pleasant Spring Broadcasting shall submit an amendment stating the correct area within its predicted Grade B contour within 20 days after this Order is released, to the presiding Administrative Law Judge.

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 Pleasant Spring Broadcasting shall submit an appropriate contour map as required by question 10 of Section V–C, F.C.C. Form 301, to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

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 to 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. 84-29926 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-1009, et al.; File Nos. 840 511 KGr, et al.]

Contemporary Communications; Inc., et al.; Hearing Designation Order

In re applications:

Contemporary Communications, Inc.	MM Docket No. 84-1009 File No. BPCT-840511KG.
John R. Powley	MM Docket No. 84-1010 File No. BPCT-840709KE.
Grand Canyon Television Co., Inc.	MM Docket No. 84-1011 File No. BPCT-840711KP.
Canyon Communications Co.	MM Docket No. 84-1012 File No. BPCT-840711KR.

For construction permit for new television station, Kingman, Arizona.

Adopted: October 17, 1984.
Released: November 2, 1984.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above—captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 6, Kingman, Arizona.

2. The Commission is not in receipt of a determination from the Federal Aviation Administration that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. 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 area and population that each purposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. Grand Canyon Television Co., Inc. (Grand Canyon) proposes to use a directional antenna. Section 73.685(e) of the Commission's Rules limits the maximum-to-minimum ratio of a VHF directional antenna to 10dB. Grand Canyon's antenna would have a maximum-to-minimum ration of 15dB. A waiver has been requested. Accordingly, an appropriate issue will be specified to determine whether waiver of § 73.685(e) is warranted.

5. FCC Form 301, Section V–C, Item 16 asks if a grant of this application would be a major environmental action. Canyon Communications Company responded with a negative answer, explaining that the tower would not be over 300 feet above ground level. Its response to Section V–G, Item 5 and its vertical sketch show the overall tower height to be 323 feet. Since grant of Canyon Communications Company's application would constitute a major environmental action as defined by § 1.1305(a) of the Commission's Rules, Canyon Communications is required to submit the environmental impact information described in § 1.1311. Accordingly, Canyon Communications will be required to file, within 20 days of the release of this Order, its environmental narrative statement with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Video Services Division, who will then proceed in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is complete. See *Golden State Broadcasting Corp.*, 71 F.C.C. 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 F.C.C. 2d 337 (1980).

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 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 each of the applicants whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine with respect to Grand Canyon whether circumstances exist which would warrant to waiver of § 73.685(e) of the Commission's Rules.

3. If a final environmental impact statement is issued with respect to Canyon Communications Company which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment.

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

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 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 data fixed for the hearing and present evidence on the issues specified in this Order.

10. 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. 84-29910 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 84-1015, et al.; File Nos. BP-831202AE, et al.]

Moore County Radio Co., et al.; Hearing Designation Order

In re Applications of:

Moore County Radio Co., Lynchburg, TN. Has: 1290 kHz, 1 kW, DA-D. Req: 870 kHz, 1 kW, D.	MM Docket No. 84-1015 File No. BP-831202AE.
Cook Communications, Inc., Valley Head, AL. Req: 870 kHz, 5 kW, D.	MM Docket No. 84-1016 File No. BP-840330AG.

For Construction Permit.

Adopted: October 16, 1984.
Released: November 2, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration: (a) The mutually exclusive applications of Moore County Radio Company ("Moore") and Cook Communications, Inc. ("Cook"); (b) a petition to deny the Cook application filed by DeKalb Broadcasting, Inc. ("DeKalb"); and (c) related pleadings.

2. In its petition, DeKalb, licensee of AM station WFPA, Fort Payne, Alabama, contends first that Cook chose Valley Head as its city of license in order to circumvent the requirements of Section 73.37(e), its real intention being to serve the larger, nearby community of Ft. Payne. DeKalb acknowledges that the Commission recently abolished the presumptions of the suburban community policy. *Suburban Community Policy*, 93 FCC 2d 436 (1983). Petitioner argues, however, that newspaper articles quoting a Cook director affirmatively demonstrate that Cook intends to serve Ft. Payne, while listing Valley Head as its city of license. The article, however, simply reports a statement to the effect that Valley Head was chosen because the Fort Payne market was full. Assuming the report to be accurate, no intentions can fairly be inferred from this statement, we believe. In any event, we do not recognize newspaper articles as sufficient support for a factual allegation. *Mississippi Authority for Educational Television*, 79 FCC 2d 577, 579 (1980).

3. Petitioner further alleges that Valley Head is not a community for licensing purposes. Valley Head, however, is listed in the 1980 U.S. Census and referred thereto as a "town", which designation is alone sufficient to qualify it as a community. *Revision of FM Assignment Policies and Procedures*, 51 RR 2d 807, 816 (1982). Additionally, Valley Head has a mayor, town council and local government agencies. Under these circumstances, DeKalb's argument is totally without merit.

4. As indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

5. 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: (a) the areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

2. To determine, in the event it is concluded that a choice between the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, better 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.

6. It is further ordered, that the petition to deny filed by DeKalb Broadcasting, Inc. is denied.

7. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order should be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street NW., Washington, D.C. 20554.

8. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

9. 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.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 84-29921 Filed 11-14-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Application for Federal Deposit Insurance—Commercial Banks (OMB No. 3064–0001).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF–83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Office of the Executive Secretary, Federal Deposit Insruance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Office of the Executive Secretary, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389–4446.

SUMMARY: The FDIC is requesting OMB to extend to November 30, 1987, the expiration date of the form FDIC 6200/05 (OMB No. 3064–0001) used by a state nonmember bank to apply for FDIC deposit insurance. The application form, which expires on November 30, 1984, contains information relating to the factors which the FDIC is required to consider under section 6 of the FDI Act (12 U.S.C. 1816) before acting on the application. It is estimated that it takes the average applicant 250 hours to prepare and submit the application.

Dated: November 8, 1984.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 84-29983 Filed 11-14-84; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-727-DR]

Texas; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-727-DR), dated October 30, 1984, and related determinations.

DATED: November 7, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice: The notice of a major disaster for the State of Texas, dated October 30, 1984, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 30, 1984:

Precinct One in Nueces County as an adjacent area for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-29876 Filed 11-14-84; 8:45 am]

BILLING CODE 6718-02-M

Privacy Act of 1974; Proposed Revision to Existing Systems of Records

AGENCY: Federal Emergency Management Agency.

ACTION: The purpose of this system is to include an ethnic/racial origin category on forms maintained in the systems of records entitled, "FEMA/NETC-1, Student Application and Registration Records, National Fire Academy" and "FEMA/NETC-3, Student Academic and Course Records."

SUMMARY: The Federal Emergency Management Agency (FEMA) is proposing to add an ethnic/racial origin category on forms maintained in the above two referenced systems of records in order to comply with statistical reporting to the Equal Employment Opportunity Commission annually of minorities and women who have received training. The information will be provided by the National Emergency Training Center in Emmitsburg, Maryland, to our Director, Office of Equal Opportunity in a statistical format.

EFFECTIVE DATE: The proposed revisions will become effective, without further notice on December 17, 1984, unless comments dictate otherwise.

ADDRESS: Written comments may be sent or delivered to Rules Docket Clerk, Federal Emergency Management Agency, (Room 835), 500 C Street, SW., Washington, D.C. 20472. Comments received will be available for public inspection at the above address during normal working hours.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 287-0313.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974, as amended by the Congressional Reports Elimination Act of 1982 (Pub. L. 97-375), agencies are required to publish a notice of the systems of records they maintain that are subject to the Act only when the agency is establishing a new system or when it substantively alters an existing system. A substantive change to an existing system is one which would also require a "Report on New Systems" and is described in the Office of Management and Budget's Circular A-108, Transmittal Memorandum No. 1 and 3. Thus, a change to the system notice that does not require such a report need only be described in the **Federal Register** notice, without the necessity of publishing the complete text of the notice. The new information is being printed in italics.

On November 26, 1982, (47 FR 53488), the Federal Emergency Management Agency published the complete text of the system of records entitled, "FEMA/NETC-1, Student Application and Registration Records, National Fire Academy." Revisions to this system of records were published on March 23, 1983 (48 FR 12133). The complete text of the system of records entitled, "FEMA/NETC-3, Student Academic and Course Records" was published on November 26, 1982 (47 FR 53489). Revisions to this system of records were published on March 23, 1983 (48 FR 12133) and October 25, 1983 (48 FR 49376).

Dated: November 8, 1984.

Russell B. Clanahan,

Acting Director, Office of Public Affairs, Federal Emergency Management Agency.

FEMA/NETC-1

SYSTEM NAME:

Student Application and Registration Records, National Fire Academy.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Files include application forms and other information submitted by the applicants. Information collected includes, but is not limited to, name, sex, social security number, date of birth, *ethnic/racial origin,* educational level, home address and job title. Files concerning students registered for Academy courses include the above information in addition to the next of kin (in case of emergency), home and/or business address, name of course, number of course credits, and grade, if any, and medical information in case of student injury or illness.

* * * * *

FEMA/NETC-3

SYSTEM NAME:

Student Academic and Course Records.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain student application records-FEMA 95-2, containing name, address, educational level, social security number, *ethnic/racial origin,* emergency management courses taken and where, emergency management organization and program affiliation, emergency management title, emergency management telephone number and length of emergency management service, employer, business title and business telephone number, student travel authorization and voucher for partial expense and date and location of course; individual training records; individual and business file for National Emergency Training Center Catalogs, Information Bulletins, etc.; Career Development Individual files; photographs with identification; MOBDES training files; Career Development directory; Student Expense files, completed Grant-in-aid forms; State recommendations, attendance and progress reports, student locators, and related academic documents.

* * * * *

[FR Doc. 84-29877 Filed 11-14-84; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of the agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on the agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 121–010673.

Title: Seattle Terminal Agreement.

Parties:

Port of Seattle (Port)

North Star Forwarding Company (NSFC)

Synopsis: Agreement No. 121–010673 provides for a month-to-month lease between the Port and NSFC for a parking lot at Terminal No. 5, Seattle. The lease provides NSFC with space for parking chassis and containers used in their rail-barge activity at Pier No. 2.

Filing party: Frank H. Clark, Director of Real Estate, Port of Seattle, Post Office Box 1209, Seattle, Washington 98111.

By Order of the Federal Maritime Commission.

Dated: November 8, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–29682 Filed 11–14–84; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address	Date revoked
2789	Freight Systems International, Inc., dba FSI, 2609 Cabover Drive, Hanover MD 21076.	Oct. 29, 1984.
2324–R	Murphy Shipping Co., Inc., First and Cedar Bldg., Suite 450, Seattle, WA 98119.	Oct. 29, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR DOC 84–29863 Filed 11–14–84; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Citizens Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 6, 1984.

A. **FEDERAL RESERVE BANK OF CLEVELAND** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Citizens Bancshares, Inc.*, Salineville, Ohio; to acquire 51 percent of the voting shares of The Miners and Mechanics Savings and Trust Company, Steubenville, Ohio.

B. **FEDERAL RESERVE BANK OF RICHMOND** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Old National Bancorp, Inc.*, Martinsburg, West Virginia; to acquire 100 percent of the voting shares of The Empire National Bank of Clarksburg, Clarksburg, West Virginia.

C. **FEDERAL RESERVE BANK OF ATLANTA** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Citizens Corporation*, Eastman, Georgia; to become a bank holding company by acquiring 90 percent of the voting shares of Citizens Bank and Trust Company, Eastman, Georgia.

D. **FEDERAL RESERVE BANK OF CHICAGO** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Badger Bank Services, Inc.*, Cassville, Wisconsin; to become a bank holding company by acquiring 95 percent or more of the voting shares of Badger State Bank, Cassville, Wisconsin.

2. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to merge with Sagamon Banc Shares, Inc., Springfield, Illinois, thereby indirectly acquiring 100 percent of the voting shares of First State Bank of Danvers, Danvers, Illinois.

3. *Lone Rock Bancorporation*, Lone Rock, Iowa; to become a bank holding company by acquiring 99 percent of the voting shares of The Lone Rock Bank, N.A., Lone Rock, Iowa.

Board of Governors of the Federal Reserve System, November 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–29959 Filed 11–14–84; 8:45 am]

BILLING CODE 6210–01–M

First Bankshares, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for

inspection at the offices of the Board of governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Bankshares, Inc.*, Barboursville, West Virginia; to engage *de novo* in acting as agent in the sale of credit life insurance sold in connection with extensions of credit by its bank subsidiary, The First State Bank.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fourth National Corporation*, Tulsa, Oklahoma; to engage *do novo* through its subsidiary, Summit Money Managers, Tulsa, Oklahoma, in providing investment advisory and management services to employee benefit plans and their fiduciaries and individuals. Company will also offer investment advisory services in the area of stocks, bonds, options and cash equivalents.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard, Street, Dallas, Texas 75222:

1. *Swiss Avenue Bankshares, Inc.*, Dallas, Texas; to engage *de novo* in making and servicing loans and other extensions of credit, for its own account or for the account of others, to include origination purchase, or sale of industrial revenue bonds and other loans such as would be made by a mortgage or commercial finance company.

Board of Governors of the Federal Reserve System, November 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-29960 Filed 11-14-84; 8:45 am]

BILLING CODE 6210-01-M

The Marine Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 Federal Register 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Marine Corporation*, Milwaukee, Wisconsin; to acquire 100 of the voting shares of Independence Bank Group, Inc., Waukesha, Wisconsin, thereby indirectly acquiring Independence Bank Brookfield, Brookfield, Wisconsin; Independence Bank Elkhorn (N.A.), Elkhorn, Wisconsin; Independence Bank, Kenosha, N.A., Kenosha, Wisconsin; Independence Bank Madison (N.A.), Monona, Wisconsin; Independence Bank New Berlin, New Berlin, Wisconsin; Independence Bank Oconomowoc (N.A.), Oconomowoc, Wisconsin; Independence Bank, Waukesha (N.A.), Waukesha, Wisconsin; and Independence Bank Wauwatosa (N.A.), Wauwatosa, Wisconsin.

The Marine Corporation has also applied to acquire Independence Trust Company, Waukesha, Wisconsin, engaging in general trust company activities; and Independence Mortgage Company, Inc., New Berlin, Wisconsin, engaging in making and acquiring loans for placement of sale in a secondary mortgage market, and to service mortgage loans for affiliates and customers.

Board of Governors of the Federal Reserve System, November 9, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-29961 Filed 11-14-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) has requested the Office of Management and Budget (OMB) to review and approve the extension of four information collections.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and to William W. Hiebert, GSA Clearance Officer, General Services

Administration (ATRAI), Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: See below.

1. *Purpose.*

a. *Description of Property for Possible Leasing, Lessor's Annual Cost Statement, Proposal to Lease Space.* This collection describes property for possible leasing to the Federal Government and is used by GSA to obtain offers in a standardized format for evaluation. Respondents and responses 2,075; hours 18,000. Contact: Hilary Peoples, Public Buildings Service (202–566–0638).

b. *U.S. Government Lease for Real Property.* This collection provides information concerning leasehold interests in real property from private ownership to the Government. Respondents and responses 2,400; hours 9,000. Contact: Audrey Harris, Office of Federal Supply and Services (703–557–1234).

c. *Transfer Order Surplus Personal Property/Continuation Sheet.* This requirement enables State and local organizations authorized by law to apply for the donation of Federal surplus personal property for use by eligible donees. Respondents and responses 63,000; hours 18,900. Contact: Jerome Jackson, Office of Finance (202–566–1260).

d. *Real Property Owned or Leased Inventory.* Information from this collection is used to maintain an inventory of all Federal real property holdings and to prepare a detailed and summary inventory report. Respondents 93, responses 186, hours 372.

2. *Obtaining copies of proposals.* Copies of these proposals may be obtained from the Directives and Reports Management Branch (ATRAI), Room 3007, GS Building, Washington, D.C. 20405 (202–566–0666).

Dated: November 7, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84–29995 Filed 11–14–84; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

NIOSH Board of Scientific Counselors; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Board of Scientific Counselors.

Date: December 11–12, 1984.

Place: Auditorium B, Centers for Disease Control, 1600 Clifton Raod, NE., Atlanta, Georgia 30333.

Time and type of meeting: Closed 9:00 a.m. to 4:30 p.m.—December 11, 1984, Open 9:00 a.m. to 3:00 p.m.—December 12, 1984.

Contact person: Elliott S. Harris, Ph.D., Executive Secretary, NIOSH Board of Scientific Counselors, NIOSH, CDC, Building 1, Room 3007, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Phone: (404) 329–3773.

Purpose: The Board is charged with advising the Director of the National Institute for Occupational Safety and Health on the scientific quality and efficacy of the Institute's research as related to the Institute's goals.

Agenda: Agenda items for the meeting will include announcements, consideration of minutes of the previous meeting, and future meeting dates. Beginning at 9:00 a.m. through 4:30 p.m., December 11, the site visit teams will discuss their review and evaluation of NIOSH intramural programs and projects conducted by NIOSH. This portion of the meeting will be closed to the public in accordance with the provisions set forth in Section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Director, Centers for Disease Control, pursuant to Pub. L. 92–463.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered during the meeting by a scheduled speaker should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary and as time permits, appropriate questions will be asked of the speakers.

Agenda items are subject to change as priorities dictate.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: November 8, 1984.

Jeffrey P. Koplan,

Acting Director, Centers for Disease Control.

[FR Doc. 84–29878 Filed 11–14–84; 8:45 am]

BILLING CODE 4160–19–M

Public Health Service

Food and Drug Administration; Statement of Organizations, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organizations, Functions, and Delegations of Authority for the Department of Health and Human Services (as amended most recently in pertinent parts at 45 FR 76518, November 19, 1980, and 47 FR 3607, January 26, 1982) is amended to reflect the merging of the Executive Director of Regional Operations (EDRO) into the Office of Regulatory Affairs (ORA). This proposed reorganization will assist the Food and Drug Administration (FDA) in strengthening the accountability of the regulatory/compliance activities of the agency and achieve efficiencies in conducting these activities. Merging these regulatory and compliance functions will provide more efficient and effective overall coordination by combining similar functions and emphasizing FDA's commitment to regulatory and compliance activities. This merger will also facilitate the coordination and training of FDA field personnel to assure their activities are consistent with Headquarters policy as the field personnel interact with regulated industries in their respective scientific and technological fields. The structure of ORA will consist of: the Office of Enforcement, comprised of two divisions; the Office of Regional Operations, comprised of four divisions; and the Office of Regulatory Resources Management, comprised of two divisions.

Section HF–B, Organization and Functions is amended as follows:

1. Delete paragraph (f) *Office of Regulatory Affairs (HFA4)* and insert a new paragraph (f), *Office of Regulatory Affairs (HFA4)* reading as follows:

(f) *Office of Regulatory Affairs (HFA4).* Advises and assists the Commissioner and other key officials on regulations and compliance-oriented matters that have an impact on policy development and execution and long-range program goals.

Coordinates, interprets, and evaluates the agency's overall compliance efforts; as necessary, establishes compliance policy or recommends policy to the Commissioner.

Stimulates an awareness within the agency of the need for prompt and positive action to assure compliance by regulated industries; works to assure an effective and uniform balance between voluntary and regulatory compliance

and agency responsiveness to consumer needs.

Directs and coordinates the rulemaking activities of the agency, including preparation of Federal Register material, in coordination with the regulations management unit of PHS, the Department's executive secretariat, and the Office of the General Counsel.

Evaluates and coordinates all proposed legal actions to ascertain compliance with regulatory policy and enforcement objectives.

Executes direct line authority over all agency field operations; develops, issues, approves, or clears proposals and instructions affecting field activities; serves as the central point within the agency through which Headquarters offices obtain field support services.

Provides direction and counsel to Regional Food and Drug Directors in the implementation of policies and operational guidelines that form the framework for management of agency field activities.

Develops and/or recommends to the Commissioner policy, programs, and plans for activities between the agency and State and local agencies; administers the agency's overall Federal-State program and policy; coordinates the program aspects of agency contracts with State and local counterpart agencies.

Evaluates the overall management and capabilities of the agency's field organization; initiates action to improve the management of field activities and coordinates the formulation and management of career development plans.

Directs and coordinates the agency's emergency preparedness and civil defense program.

Operates the Federal Medical Products Quality Assurance Program for the agency.

(f–1) *Office of Regulatory Resource Management (HFA4A).* Coordinates agencywide voluntary compliance and industry information activities.

Serves as the agency lead office in developing and maintaining international regulatory policy and activities to assure U.S. consumers the same degree of protection from imported products as from domestically produced products. Develops regulatory policies and goals for input into the agency international strategy plan.

Serves as the agency lead office, in cooperation with the Office of Health Affairs, in initiating, coordinating, and offering specific regulatory bilateral agreements and Memoranda of Understanding (MOU's) to foreign countries.

Provides policy direction to other agency components in the initiation, development, and recommendation of specific domestic regulatory bilateral agreements and MOU's with other governments.

Provides technical input for the Office of Regulatory Affairs quality assurance program as it pertains to assuring the consistency and adequacy of field investigational and inspectional operations.

Develops proposed overall field manpower allocations and long- and short-range operational program plans; identifies management data requirements for information systems; analyzes and evaluates field performance data and overall accomplishments.

Advises the Associate Commissioner and the Regional Food and Drug Directors on all areas of management, including financial management, management analysis, and administrative operations.

Designs, develops, and manages the equal employment opportunity program and a comprehensive career development and training program for Office of Regulatory Affairs Headquarters and field employees.

(f–1–i) *Division of Planning, Evaluation, and Management (HFA4A1).* Coordinates development of overall long- and short-range operational program plans and develops field manpower allocations for their accomplishment.

Acts as an advisor on matters of planning, budgeting, manpower management, and program evaluation.

Develops and coordinates the implementation of the annual field operational program plans. Has primary responsibility for implementing the agency's manpower utilization program.

Prepares estimates of compliance program costs and monitors programmatic expenditures throughout the year, recommending program changes to conserve resources.

Develops and maintains domestic and import workload information.

Analyzes field performance data, evaluates overall field accomplishments in terms of stated goals and resource utilization, and recommends changes in operational program plans and field manpower allocations.

Develops planning and evaluation policy and guidance materials, based on agency policy decisions and program evaluation data, for use by the field in program planning and budgeting. Guides the field in evaluating their own performance and coordinates field evaluation of programs.

Provides management analysis services to the Office of Regulatory Affairs Headquarters and field; designs, develops, and implements management programs, and provides in-house management consulting services.

Manages the Office of Regulatory Affairs personnel management program and maintains liaison with the servicing personnel offices in both Headquarters and the regions.

(f–1–ii) *Division of Regulatory Information Systems (HFA4A2).* Serves as focal point for the development, implementation, and direction of information systems for field operations; designs, implements, and manages systems required for the utilization of data originating in the field.

Acts as the principal advisor in data processing and data communications matters.

Maintains liaison with field users of the Office of Regulatory Affairs information systems and data processing services to improve understanding and usage.

Determines the feasibility, costs, and benefits of updating present field ADP equipment and develops, maintains, and implements modifications to the field information processing system.

Conducts feasibility studies, designs systems, and develops specifications and proposals for computer-assisted process control and automatic data acquisition and analysis in field laboratories.

Represents the Office of Regulatory Affairs in laboratory activities involving computer-assisted analysis.

Applies the specific scientific methods, tools, and techniques of operations research to provide Office of Regulatory Affairs management with decision alternatives in the form of analytically derived information and a measure of the impact each alternative will have on the particular area being studied.

Develops and maintains a field information system instruction manual for uniform data reporting.

Participates in the development and implementation of training programs for field personnel in the utilization of information systems and data processing facilities.

(f–2) *Office of Enforcement (HFA4B).* Advises and assists the Associate Commissioner and other key officials on regulations and compliance-oriented matters which have an impact on policy development and execution and long-range program goals.

Coordinates, interprets, and evaluates the agency's overall compliance efforts; as necessary, establishes compliance

policy or recommends policy to the Associate Commissioner.

Stimulates an awareness within the agency of the need for prompt and positive action to assure compliance by regulated industries; works to assure an effective and uniform balance between voluntary and regulatory compliance and agency responsiveness to consumer needs.

Acts as liaison with other Federal agencies on agency compliance matters and encourages an effective and appropriate balance between voluntary and regulatory compliance.

Directs and coordinates the rulemaking activities of the agency, including preparation of Federal Register material, in coordination with the regulations management unit of PHS, the Department's executive secretariat, and the Office of the General Counsel.

Evaluates and coordinates all proposed legal actions to ascertain compliance with regulatory policy and enforcement objectives.

Directs and coordinates with the Office of Regional Operations (ORO), other agency components, and Office of the General Counsel, new or novel cases which may be precedent-setting.

Resolves appeals when compliance actions are disapproved by the bureaus, centers, or the Office of the General Counsel.

Coordinates development of the agencywide bio-research monitoring activities; monitors compliance activities to assure uniform application of compliance policy; serves as liaison with other Federal agencies and outside organizations relating to such agencywide activities.

(f–2–i) *Division of Regulations Policy (HFA4B1).* Directs, manages, and coordinates the agency's rulemaking activities and regulations development system. Initiates new and more efficient systems or procedures to accomplish agency goals in the rulemaking process and plans "regulatory reform" steps. Advises the Director, Office of Enforcement, and other senior agency officials on formulation of broad agency regulatory policy and development of regulations reflecting that policy.

Reviews proposed regulations, final regulations, and other agency documents to be published in the **Federal Register.** Assures that they are necessary, consistent with established agency policy, clearly written, enforceable, coordianted with other agency organizational entities and Federal, State, and local government agencies, appropriately responsive to public participation requirements and executive orders, and that they have been assessed for economic and environmental effects.

Coordinates, with other agency components, the evaluation of existing regulations to determine whether they are efficiently and/or effectively accomplishing their intended purpose. Identifies regulations that require revision to correspond with current standards and those that should be revoked for obsolescence. Makes recommendations for disposition of these regulations.

Initiates and participants in interagency discussions on agency regulations, plans, and policies to improve coordination of Federal regulations. When appropriate, assumes the lead in working with other Federal, State, or local agencies on a specific regulation or in developing an effective alternative regulatory approach.

Arbitrates regulatory policy disagreements between agency components during the preparation of Federal Register documents.

Serves as liaison in the regulations development process with the Office of the General Counsel.

Reviews all material received for publication in the **Federal Register** for appropriateness as Federal Register documents. Determines the classification of documents as Rule, Proposal, or Notice.

Edits, processes, and prepares finished manuscript material for the issuance of agency proposal and final regulations and other documents published in the **Federal Register.**

Provides all Federal Register document development support functions (including cross-referencing, record retention, incorporation by reference, document tracking, and agency master print books of current CFR materials). Controls numbering and organization of agency codified material to assure proper structure of regulations being issued.

Provides guidance to assure timely processing of critical or sensitive Federal Register documents. Designs and implements systems to expedite new or unusual types of documents through the agency.

Provides advice to the field's small business representatives program concerning regulations and the Regulatory Flexibility Act. Coordinates with the Small Business Administration concerning the Regulatory Flexibility Act.

(f–2–ii) *Division of Enforcement (HFA4B2).* Establishes and/or recommends agency enforcement policy.

Provides coordinative direction for agency enforcement and compliance activities; serves as the focal point for agency operational relations on compliance problems and provides counsel to the field on compliance methods and to other countries concerned with the agency National Import Program.

Reviews proposed administrative and legal actions to ascertain compliance with enforcement policy and regulatory objectives and recommends appropriate agency action and forwards agency recommendations to the Office of the General Counsel.

Represents the field compliance activities in high level planning conferences and advises on the effects of altering compliance programs, objectives, procedures, or emphasis.

Reviews all compliance programs and assures that compliance programs are reviewed and cleared by all concerned organizational components; manages and monitors this clearance process.

Approves and coordinates input into field guidance materials including compliance programs, Compliance Policy Guides, Administrative Guidelines, and the Regulatory Procedures Manual, assuring compatibility of issuances and procedures in the agency.

Promotes and coordinates the development and implementation of agreements between the agency and foreign authorities which should enhance compliance with agency regulations by foreign groups exporting regulated products into this country.

Identifies with field managers the need for formal and informal compliance training programs for field personnel.

Provides regulatory guidance for and operational management of casework to insure timely, coordinated input from FDA Headquarters and the field.

Develops guidelines for the field and coordinates field implementation of provisions of the Privacy Act and the Freedom of Information Act.

Serves as the agency focal point for communications in the areas of nonclinical laboratory inspections, institutional review committees, clinical investigators, and sponsors.

Disseminates policy and program direction to the agency components carrying out the objectives of the Bio-research Monitoring Program.

Functions as an administrative and coordinating unit for Federal Government and international task groups developing and implementing bio-research monitoring programs.

Coordinates issuance of all inspectional assignments, monitors compliance activities after program implementation to assure uniform

application of compliance policy, and monitors the agency's performance in meeting program accomplishment projections as they relate to the Bio-research Monitoring Program.

Serves as liaison with other Federal agencies and international authorities and negotiates MOU's and interagency agreements relating to the Bio-research Monitoring Program.

(f-3) *Office of Regional Operations (HFA4C).* Coordinates and manages all agency field operations on behalf of the Associate Commissioner; develops, issues, approves, or clears proposals and instructions affecting field activities; serves as the central point within the agency through which Headquarters offices obtain field support services.

Establishes field compliance and enforcement posture, based on agency policy.

Develops and/or recommends to the Associate Commissioner policy, programs, and plans for activities between the agency and State and local agencies; administers the agency's overall Federal-State program and policy; coordinates the program aspects of FDA contracts with State and local counterpart agencies.

Coordinates field consumer affairs and information programs; distributes timely information to the field; coordinates activities with agency counterpart organizations.

Serves as the agency focal point for activities relating to the Federal Medical Products Quality Assurance Program and maintains liaison with other Government agencies procuring medical supplies; issues final administrative approval for quality assurance of specific products/firms.

Evaluates the overall management and capabilities of the agency's field organization; initiates action to improve the management of field activities and coordinates the formulation and management of career development plans.

Implements nationwide information storage and retrieval systems for data originating in the field offices.

Develops and/or recommends to the Associate Commissioner policy, programs, and plans for applied research which relates to agency enforcement problems and which will be conducted by field installations; coordinates such research efforts with appropriate agency components.

Directs and coordinates the agency emergency preparedness and civil defense programs.

Provides other agency components with laboratory support in various highly specialized areas.

Recommends priorities for all field construction, repair, improvement, and renovation and recommends short- and long-range field facility utilization plans.

(f-3-i) *Division of Federal-State Relations (HFA4C1).* Provides an agency focal point for all programmatic and operational relationships with counterpart State and local officials to assure a cohesive and uniform agency policy.

Provides overall agency leadership and guidance in the development, coordination, and evaluation of the agency Federal-State program.

Makes recommendations to the Director, Office of Regional Operations, on matters regarding agency Federal-State program policy.

Serves as the day-to-day agency liaison with organizations of Federal, State, and local officials whose interests correspond to those of the agency.

Directs a program of State Management Conferences with key State officials and agency field components.

Develops and implements a wide range of training and educational activities and information systems for personnel in State and local counterpart agencies.

Serves as the agency focal point for coordination of the programmatic aspects of all agency contracts and grants with State and local counterpart agencies.

(f-3-ii) *Division of Field Science (HFA4C2).* Advises the Director, Office of Regional Operations, concerning the management of the agency's overall field scientific resources (including national experts) to assure their coordinated, efficient, and effective use; provides coordination between field and Headquarters scientific programs.

Represents the Director, Office of Regional Operations, on top level scientific policy and program matters.

Identifies goals and objectives for field scientific activities; develops policies and procedures as they relate to these activities; coordinates and develops manuals on field laboratory operating and technical procedures.

Develops and/or reviews procedures for investigating and evaluating industry compliance with laws and regulations administered by the agency; coordinates, develops, and maintains manuals on investigational and inspectional procedures.

Develops and, through onsite visits, implements programs to assure the consistency and adequacy of field investigational and inspectional practices.

Manages the agency foreign inspection program.

Participates in the design and implementation of investigational and inspectional training programs and career development programs for field inspectors and related personnel.

Manages and coordinates field acquistion and utilization of major investigational and inspectional equipment.

(f-3-iv) *Division of Emergency and Epidemiological Operations (HFA4C4).* Coordinates and provides facts regarding epidemiological investigations and other potential imminent dangers to public health on a 24-hour, 7-day-a-week basis to Headquarters, regional, and district personnel.

Coordinates the agency's epidemiological investigations program with other Federal agencies, private associations, State and local governments, and foreign governmental health agencies in conformance with policy of national and international scope.

Recommends and coordinates epidemiological investigational practices and procedures.

Serves as focal point within the agency for guidance on recall plans and procedures. Directs and coordinates field activities in support of all product recalls; maintains liaison with other agency components, industry, and other Government agencies to assure proper implementation and completion of recall plans and activities.

Directs and coordinates the emergency preparedness and civil defense programs; coordinates Headquarters and field efforts during periods of natural disaster or national emergency.

(f-4) *Regional Field Offices (HFRI-HFRX).* An FDA Regional Field Office is the primary organizational component for each of ten regions and is organized into one or more district offices, divisions, and/or specialized centers. A Regional Field Office is under the direction of a Regional Food and Drug Director who is the primary executive of the agency within the region. The Regional Food and Drug Director is responsible for the effective implementation of all activities required to assure that regulated establishments within the region comply with laws and regulations enforced by FDA.

Within FDA Regional Field Offices, functions performed are as follows:

Provides managerial direction to the agency's field programs to achieve compliance with the laws and regulations for which the agency is responsible through appropriate voluntary correction or regulatory action.

Manages resource allocations, money, and people.

Manages a field management information system.

Coordinates agency activities with related operations of the PHS Regional Health Administrator and the Department's Regional Director.

Develops and maintains cooperative relationships with State, local, and other Federal agencies; serves on interagency councils; encourages improved State and local consumer protection programs pertinent to agency-enforced laws and regulations.

Assists State and local cooperative officials in the development of uniform legislation, codes, and regulations.

Represents the agency, or provides policy and direction for agency representation, in dealing with public and private organizations, such as governmental agencies, volunteer agencies, educational institutions, industry and professional associations, and the local media within the region.

Plans and evaluates program activities; measures accomplishments against annual field workplan objectives; initiates management and program analyses; manages a Quality Assurance Program; and advises Headquarters regarding strategy changes needed to reach existing or modified objectives.

Advises Headquarters on new or emerging problems and trends, future program needs and priorities; State legislative activities; manpower, equipment, financial needs, and long-range planning.

Coordinates emergency activities by maintaining liaison with Department components, and other Federal departments and agencies and by providing assistance to States and localities in the event of a national disaster or other emergency.

Advises, commissions, and certifies State personnel; and monitors and evaluates State programs in milk, shellfish, food service sanitation, and radiation safety.

Determines acceptability of items, subject to the agency's jurisdiction, for entry into this country through examination of available records, inspection of the product, or by sampling and laboratory examination of the product followed by release, detention, and/or rejection.

Conducts investigations and inspections, and analyzes samples of foods, drugs, and other commodities for which the agency has regulatory responsibility.

Conducts administrative hearings on alleged violations, and initiates appropriate enforcement action.

Recommends legal action to Headquarters, to the Office of the General Counsel, or to the responsible U.S. attorney (when such direct reference is authorized), and assists in implementing approved action.

Detains medical devices and meat, poultry, or egg products that may be violative.

Manages recalls and performs followup activities to assess recall effectiveness and prevent recurrences.

Conducts research to develop and refine analytical methodology and to explore new systems of analysis; maintains liaison with scientists and scientific bodies with interests pertinent to laboratory activities.

Manages, evaluates, and audits the program aspects of Federal-State contracts.

Manages an equal employment opportunity and career development and training program.

Conducts consumer affairs and information programs.

Provides formal mechanisms for receiving consumer input into agency planning and priority setting systems.

Directs a freedom of information program consistent with agency policy.

Maintains liaison with the medical community to share the agency's position on pertinent issues, and to obtain feedback regarding the concerns of physicians and other health-related scientists.

Conducts a small business representative program.

2. Delete paragraph (x) and all subparagraphs for the *Executive Director of Regional Operations (HFR).*

Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs: all delegations of authority to the Executive Director of Regional Operations are vested in the Associate Commissioner for Regulatory Affairs; all delegations of authority to Associate Directors of the Office of the Executive Director of Regional Operations are vested in the Directors of Offices in the Office of Regulatory Affairs; and all delegations of authority to any other officer or employee of the merged organizations in effect prior to the date of this order shall continue in effect in them or their successors.

Dated: November 5, 1984.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-29929 Filed 11-14-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-84-1476]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submissions of Proposed Information Collection to OMB

Proposal: Evaluation of Child Care Services in Facilities Furnished by PHAs/IHAs
Office: Policy Development and Research
Form No. None
Frequency of Submission: Single Time
Affected Public: Individuals or Households and State or Local Governments
Estimated Burden Hours: 339
Status: New
Contact: Garland Allen, HUD, (202) 755–5574; Robert Neal, OMB, (202) 395–7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 16, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84–29971 Filed 11–14–84; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–84–1475]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the propsals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) the title of the information collection proposals; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposals; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Informaton Collection to OMB

Proposal: Title I Monthly Statement—Reconcilement of Insurance Charges
Office: Administration
Form No.: HUD–646
Frequency of Submission: Monthly
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 2,085
Status: Reinstatement
Contact: Cynthia H. Palmer, HUD, (202) 755–5246, Robert Neal, OMB, (202) 395–7316

Proposal: Request for Financial Information (24 CFR 203.651)
Office: Housing
Form No.: HUD–92068 F
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, Businesses or Other For-Profit, and Federal Agencies or Employees
Estimated Burden Hours: 19,000
Status: Extension
Contact: Art Orton, HUD, (202) 755–6672, Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 5, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84–29972 Filed 11–14–84; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–84–1474]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Indian Community Development Block Grant Program
Office: Community Planning and Development
Form No. SF–424, HUD–4011, 4121, 4122, 4123, 4125, and 4126
Frequency of Submission: Annually
Affected Public: State or Local Governments and Indian Tribes
Estimated Burden Hours: 20,200
Status: Extension
Contact: Marcia Brown, HUD (202) 755–6092, Robert Neal, OMB, (202) 395–7316.

Proposal: Mortgagee's Application for Partial Settlement (Multifamily Mortgage)
Office: Administration
Form No. HUD–2537
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 50
Status: Extension
Contact: Eugene Morroni, HUD, (202) 755–7523, Robert Neal, OMB, (202) 395–7316.

Proposal: New Horizons Fair Housing Strategy and Assessment
Office: Fair Housing and Equal Opportunity
Form No. HUD–960
Frequency of Submission: Annually
Affected Public: State or Local Governments
Estimated Burden Hours: 2,400
Status: Extension
Contact: Arnold McNeill, HUD (202) 755–7007, Robert Neal, OMB, (202) 395–7316.

Proposal: Application for Homeownership Assistance under Section 235 of the National Housing Act
Office: Housing
Form No. HUD–93100
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Businesses or Other For-Profit
Estimated Burden Hours: 2,700
Status: Reinstatement
Contact: William A. Rolfe, HUD, (202) 755–3046, Robert Neal, OMB, (202) 395–7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 31, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84–29973 Filed 11–14–84; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–84–1477]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Intersted persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Project Improvement Program, Budget Worksheet, and Review Report
Office: Housing.
Form number: HUD–9824, 9834, 9834 A&B, 9835, and 9835 A&B
Frequency of submission: Annually
Affected Public: Businesses or Other For-Profit
Estimated burden hours: 7,000
Status: Reinstatement
Contact: Joel Balsham, HUD, (202) 755–5654; Robert Neal, OMB, (202) 395–7316

Proposal: Requisition for Advance of Flexible Subsidy Funds
Office: Housing
Form number: HUD–9823A, 9823B, and 9824A
Frequency of submission: Quarterly
Affected public: Businesses or Other For-Profit
Estimated burden hours: 9,500
Status: Reinstatement
Contact: Joel Balsham, HUD, (202) 755–5654; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 7, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84–29970 Filed 11–14–84; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–84–1478]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Mangement and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and

Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as requried by the Paperwork Reduction Act (44 U.S.C. Chaper 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or rein statement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: HUD Project/Building Name and Address Input Form
Office: Fair Housing and Equal Opportunity
Form number: HUD-951
Frequecy of submission: Single Time
Affected Public: Businesses or Other For-Profit and Non-Profit Institutions
Estimated burden hours: 6,200
Status: New
Contact: Mary George, HUD, (202) 755-5288; Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 12, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-29969 Filed 11-14-84; 8:45 am]
BILLING CODE 4210-0-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

California; Realty Action Sale of Public Lands in Nevada County

Federal Register Document No. 83-26784 appearing on pages 44937 and 44938 of the September 30, 1983 issue did not segregrate the lands from appropriation under the public land laws, including the mining laws. The notice of the above document is amended to segregate the lands in T. 15 N., R. 8 E., Section 3, Lot 113 from location under the public land laws, including the mining laws.

D. K. Swickard,

Area Manager.

[FR Doc. 84-29882 Filed 11-14-84; 8:45 am]
BILLING CODE 4310-40-M

[I-20087]

Realty Action; Competitive Sale of Public Lands in Cassia County, ID; Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, I-20087, Competitive Sale of Public Lands in Cassia County, Idaho; Amendment.

SUMMARY: This document amends the original Notice of Realty Action that was published on May 12, 1983 (48 FR 21380) to allow for the re-offering of parcel I-20087 for sale under the updated sale regulations.

The following described land has been examined and through development of land use decisions based on public input, it has been determined that the sale of the tract is consistent with section 203(a)(1) of the Federal Land Policy and Management Act of 1976 (FLPMA). The parcel is not presently available for livestock grazing; therefore, no cancellation of grazing preference is required under the regulations in 43 CFR 4110.4-2(a). Legal access to the parcel will not be provided by BLM. The land will be offered for sale using competitive bidding procedures (43 CFR 2711.3-1,2) for no less than the appraised fair market value. Any bids for less than such value will be rejected as required by FLPMA. The appraised fair market value will be available after November 30 from the Burley District Office. Only sealed bids will be accepted. A bid will also constitute an application for conveyance of the mineral rights, except geothermal, oil and gas. The mineral interests being offered for conveyance have no known monetary value. Each bidder must submit a fifty dollar ($50) non-returnable (for the successful bidder) filing fee for the mineral conveyance (43 CFR 2720.1-2(c)) and 30 percent of the full bid price (43 CFR 2711.3-1(d)), with the bid. Failure to deposit these sums will result in disqualification as the high bidder.

Should the land remain unsold after the January 9, 1985 offering, it will be reoffered for sale at the same time and place the first Wednesday of each month for three consecutive months until sold or the sale is otherwise suspended.

Legal Description	Acres
T. 15 S., R. 24 E., B.M., Sec. 22: SW¼NE¼	40

The lands are hereby segregated from appropriation under the public land laws, including the mining laws as provided by 43 CFR 2711.1-2(d). The segregative effect of the NORA shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation, or 270 days from the date of publication, whichever occurs first.

The patent when issued will contain the following reservations to the United States:

1. A right-of-way for ditches and canals constructed under the Act of August 30, 1890 (43 U.S.C. 945).

2. All oil and gas rights (43 U.S.C. 1719).

DATES: All sealed bids must be received by 1:30 p.m. on January 9, 1985. At this time all bids will be opened at the Burley District Office.

Dated: November 6, 1984.

John S. Davis,

District Manager.

[FR Doc. 84-29893 Filed 11-14-84; 8:45 am]
BILLING CODE 4310-22-M

[F-14955-A]

Alaska Native Claims Selection; Wales Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance (DIC) under the provisions of sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611 (1976), will be issued to Wales Native Corporation, for approximately 0.45 acres. The lands involved are within the Kateel River Meridian, Alaska:

Sec. 5, T. 2 N., R. 45 W.

Upon issuance, the DIC will be published once a week, for four (4) consecutive weeks, in the *Nome Nugget.* For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until December 17, 1984 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Barbara Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 84-29908 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-JA-M

[CA 15850]

Realty Action; Direct Sale of Public Land in Trinity County, CA

Correction

In FR Doc. 84-28152 appearing on page 42989 in the issue of Thursday, October 25, 1984, make the following correction: In the second column, third paragraph, fifth line, "$250.000" should read "$250.00.".

BILLING CODE 1505-01-M

Proposed Resource Management Plan and Final Environmental Impact Statement; Cedar-Beaver-Garfield-Antimony Planning Area, UT

Correction

In the issue of Friday, November 9, 1984, in the document beginning on page 44814 in the third column, make the following correction: On page 44815, in the first column, in the file line at the end of the document, "FR Doc. 84-29926" should read "FR Doc. 84-29526".

BILLING CODE 1505-01-M

[U-53104]

Utah; Realty Action Sale of Public Lands in Uintah County

The Bureau of Land Management, based on land use plans, has determined that the following described land is suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value ($6,400):

T. 3 S., R. 19 E., SLM
Sec. 20: NE¼NE¼
Total 40 acres.

The above described land will be offered for sale on January 15, 1985, by sealed bids. All bids must be received by 12:00, January 15, 1985, at the Vernal District Office, 170 South 500 East, Vernal, Utah 84078. Bids will be opened and a high bidder declared at 1300 hours, January 15, 1985.

The land is being offered for sale in order to facilitate land-use planning in the area, enhance land-use compatibility with adjoining private lands, and to steamline administrative procedures. The land has potential for livestock grazing and limited wildlife use. The sale is consistent with the Bureau's planning for the land involved with notification to the Uintah County Commission, the Utah State Planning Office, and the Utah Division of Wildlife Resources.

The terms and conditions applicable to the sale are:

1. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

2. The sale will involve the surface estate only. The subsurface estate will be reserved to the United States.

3. The sale of this land will be subject to all existing rights.

4. No preference right will be given to the adjoining private land owner. No bids will be accepted for less than the appraised price and bids must include all land in the parcel. Federal law requires that bidders be U.S. citizens or, in the case of a corporation, be subject to the laws of the State of Utah. Proof of citizenship may be required.

5. The United States will reserve the right of ingress and egress for mineral development.

6. Upon disqualification of the apparent high bidder, the next high bid will be honored.

7. A right-of-way is reserved for ditches and canals constructed by the authority of the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

The highest bid will establish the sale price. Each bid must be accompanied by a deposit of one-fifth of the full bid price. The remainder of the full bid price shall be paid within 30 days of the sale. Failure to pay the full price within 30 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale.

All bids will be either returned, accepted, or rejected within 30 days of the sale date.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the Vernal District Manager, 170 South 500 East, Vernal, Utah 84078. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 84-29986 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-DQ-M

[N-39502]

Issuance of Conveyance Document; Issuance of Land Exchange Conveyance Document; Exchange of Public and Private Lands in Lyon and Douglas Counties; NV

November 5, 1984.

The United States issued an exchange conveyance document to John J. Ascuaga and Rose L. Ascuaga on October 31, 1984 for the following described lands under the Act of October 21, 1976, 90 Stat. 2756; 43 U.S.C. 1716:

Mount Diablo Meridian

T. 11 N., R. 23 E.,
Sec. 12, SE¼NE¼.
T. 11 N., R. 24 E.,
Sec. 7, lots 1, 2, NE¼, E½NW¼;
Comprising 362.08 acres of public land.

In the exchange for these lands, the United States acquired the following described lands:

Mount Diablo Meridian

T. 14 N., R. 19 E.,
Sec. 16, SE¼NW¼, E½SE¼;
Sec. 21, NE¼NW¼;
Sec. 22, SW¼;
Sec. 27, N½N½NW¼;
Comprising 360.00 acres of private lands.

The purpose of this exchange was to acquire the non-Federal lands within and adjacent to the boundary of the Toiyabe National Forest. The public interest was served through completion of this exchange.

The values of Federal public land and the non-Federal land in the exchange were apprised equally at $280,000 each.

William K. Stowers,

Acting Chief, Lands and Minerals Operations.

[FR Doc. 84-29994 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-HC-M

Vale District Grazing Advisory Board; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting, Vale District Grazing Advisory Board.

SUMMARY: Notice is given in accordance with Pub. L. 92-463 that the Vale District Grazing Advisory Board will meet December 10, 1984. The Advisory Board will discuss grazing increases in wilderness study areas, land tenure adjustment, and establishment of emergency forage reserves.

ADDRESS: The meeting will begin at 9:00 A.M. in the conference room of the District Office, 100 Oregon Street, Vale, Oregon 97918.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Bureau of Land Management, Vale District, P.O. Box 700, 100 Oregon Street, Vale, Oregon 97918.

David Lodzinski,

Acting District Manager.

[FR Doc. 84-30124 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-33-M

Vale District Advisory Council, Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of Meeting, Vale District Advisory Council.

SUMMARY: Notice is given in accordance with Pub. L. 92-463 that the Vale District Advisory Council will meet December 11, 1984. The Advisory Council will discuss grazing increases in wilderness study areas, land tenure adjustments, subleasing of grazing permits, and establishment of emergency forage reserves.

ADDRESS: The meeting will begain at 9:00 A.M. in the conference room of the District Office, 100 Oregon Street, Vale, Oregon 97918.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Bureau of Land Management, Vale District, P.O. Box 700, 100 Oregon Street, Vale, Oregon 97918.

David Lodzinski,

Acting District Manager.

[FR Doc. 84-30123 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement for the Comprehensive Conservation Plan and Wilderness Suitability Assessment for the Yukon Delta National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service intends to prepare an Environmental Impact Statement (EIS) and a comprehensive conservation plan and wilderness suitability assessment for the Yukon Delta National Wildlife Refuge in Alaska. This notice is being furnished as required by the National Environmental Policy Act regulations to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Public meetings will also be held to solicit comments and participation in this scoping process.

DATES: Written comments should be received by June 30, 1985. A public meeting regarding the project will be held at:

Bethel, Alaska, Kuskokwim Valley Community College, December 13, 1984.

Additional public meetings will be held in several communities throughout the Yukon—Kuskokwin Delta region and in Anchorage during the period January–May 1985. Notice will be published locally in advance of these meetings.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service; 1011 E. Tudor Road; Anchorage, Alaska 99503. Attention: Mike Evans.

FOR MORE INFORMATION CONTACT: Mike Evans, Public Affairs Specialist, Refuge Planning, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503. (907) 786-3369.

SUPPLEMENTARY INFORMATION: This planning and assessment project is being carried out pursuant to sections 304(g) and 1317 and other provisions of the Alaska National Interest Lands Conservation Act of 1980. The environmental impacts of the project will be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality regulations (40 CFR Parts 1500–1508), other appropriate federal regulations, and Fish and Wildlife Service procedures for complying with those regulations.

We estimate that the draft EIS, plan, and assessment will be available for public review by December 1986.

David L. Olsen,

Regional Director.

[FR Doc. 84-29997 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Mid-Atlantic Regional Technical Working Group; Meeting

November 9, 1984.

Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463).

Name: Mid-Atlantic Regional Technical Working Group (RTWG).

Date: December 11, 1984.

Place: Tysons Corner Holiday Inn, Potomac Room, 1960 Chain Bridge Road, Vienna, Virginia.

Time: 9:00 AM to 5:00 PM.

Committee membership consists of representatives from Federal Agencies, the Coastal States of New York through North Carolina, the petroleum industry, and other private interests. The purpose of the meeting is to advise the Director, Minerals Management Service (MMS), on technical matters of Regional concern regarding prelease and postlease sale activities.

Agenda: OCS Sale No. 111 Draft Environmental Impact Statement; 5-Year OCS Leasing Schedule; Legislative Update; Shell Deep Water Drilling Update/Review; Port Access Routes Study; Delaware Geologic Survey Atlantic Basement Map; Fiscal Year 1986 Environmental Studies Update; National Pollutants Discharge Elimination System; Election of Next State RTWG Cochair; Discussion of Next Meeting; Summary of Action Items.

This meeting will be open to the public. Public attendance may be limited by the space available. Persons wishing to make oral presentations to the Committee regarding items on the agenda should contact Mr. Bruce G. Weetman of the Atlantic OCS Regional Office at (703) 285-2165 by December 4, 1984. Written statements should be submitted by December 18, to the

Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180.

Minutes of the meeting will be available for public inspection and copying by March 11, 1985, at the above address.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 84-29934 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Offshore the Middle Atlantic States; Availability of Draft Environmental Impact Statement and Location and Dates of Public Hearings Regarding Proposed Oil and Gas Lease Sale No. 111

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service has prepared a draft environmental impact statement relating to a proposed oil and gas lease sale offering tracts consisting of 20.3 million acres of submerged lands on the Outer Continental Shelf (OCS) offshore the Middle Atlantic States (OCS Sale No. 111).

Single copies of the draft environmental impact statement can be obtained from the Regional Director, Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna Virginia 22180.

Copies of the draft environmental impact statement will also be available for review in the following public libraries:

East Albermarle Regional Library, 205 E. Main Street, P.O. Box 303, Elizabeth City, NC 28560
Olivia Raney Public Library, 104 Fayetteville Street, Raleigh, NC 27601
New York Public Library, 5th Avenue & 42nd Street, New York, NY 10018
New Berne-Craven County Public Library, 400 Johnson Street, New Bern, NC 27909
Wilmington Public Library, 409 Market Street, Wilmington, NC 28401
Nassau Library System, Reference Division, 900 Jerusalem Avenue, Uniondale, NY 11533
Suffolk Cooperative Library, 627 N. Sunrise Service Road, P.O. Box 1872, Bellport, NY 11713
Atlantic City Free Library, Illinois & Pacific Avenues, Atlantic City, NJ 08401
Newport Public Library, Aquidneck Park, Newport, RI 02840
Christian Science Monitor, 1 Norway Street, Boston, MA 02115
Rehoboth Beach Public Library, Municipal Center, Rehoboth Avenue, Rehoboth Beach, DE 19971
Atlantic County Library, Surrogate Building, Mays Landing, NJ 08330
Public Library, 639 Washington Street, Cape May, NJ 08204
Norfolk Public Library System, 301 S. City Hall Avenue, Norfolk, VA 23510
East Brunswick Public Library, 2 Jean Walling Civic Center, East Brunswick, NJ 08816
Eastern Shore Area Library, 122-126 South Division, Salisbury, MD 21801
Trenton Free Public Library, 120 Academy Street, Trenton, NJ 08608
Providence Public Library, 150 Empire Street, Providence, RI 02903
Boston Public Library, Copley Square, Boston, MA 02117
Free Library of Philadelphia, Logan Circle, Philadelphia, PA 19141
Ocean County Library, 15 Hooper Avenue, Toms River, NJ 08753
Public Library, 105 45th Street, Sea Isle City, NJ 08243
Enoch Pratt Free Library, 400 Cathedral Street, Baltimore, MD 21201
Monmouth County Library, 25 Broad Street, Freehold, NJ 07728
New Jersey State Library, P.O. Box 1898, Trenton, NJ 08625
Wilmington Institute Free Library and Newcastle County Free Library, 10th & Market Streets, Wilmington, DE 19801

In accordance with 30 CFR 256.26, public hearings will be held on December 12, 1984, at the Capitol Plaza Hotel, 240 W. State Street, Trenton, New Jersey, and on December 14, 1984, at the Holiday Inn of Annapolis, U.S. 301-50, Annapolis, Maryland, for the purpose of receiving comments regarding the Middle Atlantic OCS leasing proposal. The hearings will begin at 9:00 a.m. and will conclude after all testimony has been received.

The hearings will provide the Secretary of the interior with additional information from both public and private sectors to help evaluate fully the potential effects of leasing oil and gas tracts offshore the Middle Atlantic States. In addition, the proceedings will give the Secretary the opportunity to receive further comments and views of concerned Federal, State, and local agencies.

Interested individuals, representatives of organizations, and public officials who wish to testify at the hearing are requested to contact the Regional Director, Atlantic OCS Region, Minerals Management Service, at the above address by 4:30 p.m., December 5, 1984. Written comments from those unable to attend the hearing also should be addressed to the Regional Director, Atlantic OCS Region, Minerals Management Service, at the above address. The Minerals Management Service will accept written testimony and comments on the draft environmental impact statement until January 8, 1985. Time limitations may make it necessary to limit the length of oral presentations to 10 minutes. An oral statement may be supplemented, however, by a more complete written statement which may be submitted to the hearing officer at the time of presentation of the oral statement.

Written statements presented in person at the hearing will be considered as part of the hearing record. To the extent that time is available after presentation of oral statements by those who have given advance notice, the hearing will be open to the presentation of statements by other members of the public present.

After testimony and comments have been received and analyzed, a final environmental impact statement will be prepared.

William D. Bettenberg,

Director, Minerals Management Service.

Approved:

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 84-29984 Filed 11-14-84; 8:45 am]

BILLING CODE 4310-84-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Redelegation of Authorities to the Field; Latin America and the Caribbean Region

Section I. Definition

AID Missions and Posts

AID Missions and Posts subject to this redelegation of authorities shall be the AID Missions to and Posts for Belize, Bolivia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Panama, Paraguay and Peru, and the Regional Office for Central American Programs (ROCAP) and the Regional Development Office for the Caribbean (RDO/C).

Section II. Authorities

A. Implementing Authorities

Authority to negotiate, execute, and implement, in accordance with the terms of the authorization thereof and in accordance with applicable statutes and regulations, loan, grant and guaranty (other than Housing Guaranty) agreements, and amendments thereto, to

their respective countries or regions, whether heretofore or hereafter authorized, including, but not limited to, authority:

1. To sign project grant agreements with foreign governments, foreign government agencies, and international organizations having a membership consisting primarily of such foreign governments; and to sign all project loan and guaranty (other than Housing Guaranty) agreements and trust fund agreements;

2. To approve contractors, review and approve all borrower/guarantee contracts financed in whole or in part by an AID loan or grant and review and approve request for proposals and invitations for bids with respect to such contracts; *provided, however,* that any invitations for bids for construction activities which will be advertised in the United States and which are estimated to be $500,000 or more shall be first reviewed and approved by a Regional Legal Advisor or GC and by a U.S. direct hire engineer; and provided *further, however,* that any invitations for bids for fabricated or made-to-order equipment (e.g., turbines, transformers but not motor vehicles) which are estimated to $200,000 or more shall be first reviewed and approved by a Regional Legal Advisor or GC and by a U.S. direct hire engineer;

3. To prepare, negotiate, sign and deliver Project Implementation Letters; and

4. To review and approve documents and other evidence submitted by borrowers or grantees in satisfaction of conditions precedent under such loan, grant or guaranty agreements.

(See Delegation Nos. 5, 38)

Please note that the Director, SER/CM, has redelegated to the principal AID officers at posts in the LAC Region the authority to (i) execute OPGs with U.S. PVOs, pursuant to Redelegation of Authority No. 99.1.202 and (ii) sign grants to foreign non-governmental non-profit organizations, pursuant to Redelegation of Authority No. 99.1.122).

B. Waiver Authorities for Source, Origin and Nationality

Authority to waive, in accordance with the applicable statutes and regulations, including the terms of Delegation of Authority No. 40 (AID Handbook 5) and the criteria prescribed by Supplement B of AID Handbook 1:

1. Selected Free World

U.S. source, origin and nationality requirements, to permit AID financing of the procurement of goods and services, other than transportation services in countries included in AID Geographic Code 941 (Selected Free World) and the cooperating country, when the cost of goods and services does not exceed $5.0 million (exclusive of transportation costs) of funds made available under the Foreign Assistance Act of 1961, as amended (the "Act"); provided, however, that any waiver of the United States source and origin requirements for motor vehicle procurement shall not exceed $50,000 for any one transaction; that each such motor vehicle waiver shall contain the required certification, as set forth in Delegation of Authority No. 40; and that a summary of each waiver shall be cabled to AA/LAC when the waiver is signed and that this waiver authority for the AID officers in Belize and Guyana shall be limited to $1 million.

2. Free World

U.S. or AID Geographic Code 941 source, origin and nationality requirements, to permit AID financing of the procurement of goods and services, other than transportation services, in any country included in AID Geographic Code 899 (Free World) or AID Geographic Code 935 (Special Free World), when the cost of goods and services does not exceed $5.0 million (exclusive of transportation costs) of funds made available under the Act; *provided, however,* that any waiver of the United States source and origin requirements for motor vehicle procurement shall not exceed $50,000 for any one transaction; and that each waiver hereunder shall contain the appropriate certification, as set forth in Delegation of Authority No. 40; and that a summary of each waiver shall be cabled to AA/LAC when the waiver is signed and that this waiver authority for the AID officers in Belize and Guyana shall be limited to $1 million.

(See Delegation No. 40).

C. Excess Property

In accordance with the provisions of Section 607 of the Act and of AID Handbook 16, and subsequent to my authorizing such assistance, authority to execute transfer or transfer/trust agreements and amendments thereto with friendly countries or with international organizations having a membership primarily of foreign governments.

(See Delegation No. 40).

D. Extension of Terminal Dates

In accordance with AID Handbook 3 and Delegation of Authority No. 133, and any amendments thereto, authority to extend:

1. The terminal date for meeting conditions precedent for a cumulative period of not to exceed one year;

2. The terminal date for requesting disbursement authorizations for a cumulative period of not to exceed two years; and

3. The terminal date for completion of performing services and furnishing goods (PACD) for a cumulative period of not to exceed two years;

Provided, however, that this authority shall be exercised in writing, including a justification therefor, and a copy shall be forwarded to the Director, LAC/DR; and *provided further, however,* that this authority shall not be exercised if the result of so doing will cause the total life of a project (e.g., from point of initial obligation to revised PACD) to be more than ten years.

E. Waiver Authorities for Competition Under Borrower/Grantee Contracts

Authority to waive, in accordance with the terms and provisions of chapter 12C4a of Supplement B of AID Handbook 1, competition in the procurement of goods and services and to authorize a single-source negotiated borrower/grantee contract; *provided* that the estimated procurement does not exceed, $1,000,000; that the USAID Noncompetitive Review Board finds the waiver justified; that summary of each waiver shall be cabled to AA/LAC when the waiver is signed; and that this authority for the AID officers in Belize and Guyana is limited to $100,000.

(Please note that the provisions for noncompetitive negotiations of AID direct contracts are set forth in the AIDPRs, Part 7–3.)

F. Waivers of Advertisement Requirements

Authority to waive the requirement that a notice of availability of an IFB, RFTP, TFQ, or prequalification questionnaie be publicized in the *Commerce Business Daily* or an AID Publication for contracts which are $500,000 or less in estimated value; *provided,* however, that this authority only shall be exercised to avoid serious delay in project implementation; and *provided further,* however, that efforts shall in any event be made to secure proposals, bids, or offers from a reasonable number of potential contractors or suppliers.

Section III. Redelegation of Authorities

Pursuant to the authorities delegated to me as Assistant Administrator for Latin America and the Caribbean, I hereby delegate all of the authorities set forth in Section II hereof, retaining for

my self concurrent authority to exercise any of the functions herein redelegated, to the principal AID officer of each Mission and Post included in Section 1.

A. The authorities redelegated pursuant to Section III hereof shall be exercised after consultation with a Regional Legal Advisor or GC/LAC, as appropriate, and any other appropriate support office (e.g., Contract Management, Commodity Management).

B. The authorities redelegated pursuant to Section III hereof (other than those set forth in Section II. E) may, in the discretion of the principal AID officer, be futher redelegated to his/her deputy or the individual acting in such capacity or may be exercised by the person acting in the capacity of the principal AID officer while the latter is out of the country (with my prior approval).

C. This redelegation of authorities shall become effective on the date of my execution of this document and shall supersede on that date all delegations of authority previously issued to the affected AID Missions and Posts by the Assistant Administrator for Latin America and the Caribbean and/or the Deputy U.S. Coordinator of the Alliance for Progress; provided, however, that all actions taken under the delegations of authority which are hereby superseded shall remain valid and are hereby reaffirmed.

Dated: November 2, 1984.

Victor Rivera,

Assistant Administrator, Bureau for Latin America and the Caribbean.

[FR Doc. 84-29902 Filed 11-14-84; 8:45 am]

BILLING CODE 6116-01-M

A.I.D. Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on December 11, 1984 at the State Department Building, 2201 C Street, NW., Washington, D.C., Conference Room 1105. The Committee will discuss recent developments in A.I.D. research policy.

The meeting will begin at 9:00 a.m. and adjourn at 5:30 p.m. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent the time available for the meeting permits. Dr. Erven J. Long, Director, Office of Technical Review and Information, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Dr. Long, 1601 N. Kent Street, Arlington, Virginia 22209 or call area code (703) 235-8929.

Date: November 6, 1984.

Erven J. Long,

A.I.D. Representative, Research Advisory Committee.

[FR Doc. 84-29996 Filed 11-14-84; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-204 (Preliminary)]

Grand and Upright Pianos From the Republic of Korea; Determination

On the basis of the record [1] developed in investigation No. 731-TA-204 (Preliminary), the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured [2] by reason of imports from the Republic of Korea of grand and upright pianos, provided for in items 725.01 and 725.03 of the Tariff Schedules of the United States, which are allegedly being sold in the United States at less than fair value (LTFV).

Background

On September 21, 1984, petitions were filed with the U.S. International Trade Commission and the U.S. Department of Commerce by counsel on behalf of Aeolian Pianos, Inc., Memphis, TN; Baldwin Piano & Organ Co., Inc., Cincinnati, OH; Kohler & Campbell, Inc., Granite Falls, NC; and Sohmer & Co., Inc., Ivoryton, CT. The petitions allege that grand and upright pianos from the Republic of Korea are being, or are likely to be, sold in the United States at LTFV. Accordingly, effective September 21, 1984, the Commission instituted a preliminary antidumping investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the importation of such merchandise into the United States.

[1] The "record" is defined in § 207.2(i) of the Commission's *Rules of Practice and Procedure* (19 CFR 207.2(i)).

[2] Chairwoman Stern and Commissioner Lodwick find a reasonable indication of material injury or threat of material injury.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 3, 1984 (49 FR 39115). The conference was held in Washington, DC, on October 16, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission's determination in this investigation was made in an open "Government in the Sunshine" meeting held on October 29, 1984.

The Commission transmitted its report on this investigation to the Secretary of Commerce on November 5, 1984. A public version of the Commission's report, Grand and Upright Pianos from the Republic of Korea (investigation No. 731-TA-204 (Preliminary), USITC Publication 1599, November 1984), contains the views of the Commission and information developed during the investigation.

By Order of the Commission.

Issued: November 5, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30055 Filed 11-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-151]

Certain Apparatus for Flow Injection Analysis and Components Thereof; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: The U.S. International Trade Commission has terminated the above-captioned investigation as having abated and has vacated the presiding officer's initial determination of April 2, 1984

FOR FURTHER INFORMATION CONTACT: Wayne W. Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0480.

SUPPLEMENTARY INFORMATION: On April 2, 1984, the presiding officer filed an initial determination that there is a violation of section 337 in the importation and sale of certain apparatus for flow injection analysis and components thereof. The investigation was suspended on May 2, 1984, pending outcome of a reexamination proceeding in the U.S.

Patent and Trademark Office, which was completed on August 28, 1984. On September 27, 1984, the Commission issued an order to show cause why this investigation should not be terminated as having abated as a result of the reexamination certificate. (49 FR 39117, October 3, 1984).

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–210.56 of the Commission's Rules of Practice and Procedure (47 F.R. 25134, June 10, 1982 and 48 FR 9242, March 4, 1983; codified at 19 CFR 210.53–210.56).

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspesction during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–5232–0161.

Issued: November 5, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–30058 Filed 11–14–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–199]

Certain Anodes for Cathodic Protection and Components Thereof; Commission Decision Not To Review Initial Determination Amending Complaint and Notice of Investigation To Join Four Respondents

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination (ID) amending the complaint and notice of investigation to add four respondents to the above-captioned investigation.

SUMMARY: The complaint filed with the Commission on June 11, 1984, by Duriron Co., Inc., and the notice of investigation published in the **Federal Register** of July 25, 1984 (49 FR 30023), have been amended to add the following parties as respondents in the investigation:

Jennings Winch & Foundry Co., Ltd., Tatham Street, Sunderland, U.K. SR1 2AG

Hugh Jennings & Co., Ltd., Meares House, 194/196 Finchley Road, London, England NW3 6B4

Richard's Foundries, Ltd., P.O. Box 78, Phoenix Iron Works, Martin Street, Leicester, England

Harco Corp., 1055 West Smith Road, Medina, OH 44256.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

SUPPLEMENTARY INFORMATION:

The investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation or sale of certain anodes for the cathodic protection of metallic structures, and components thereof. *See* 49 FR 30023 (July 25, 1984).

On September 11, 1984, complainant Duriron Co., Inc. moved to amend the complaint and notice of investigation to add Jennings Winch, Hugh Jennings, and Richards as respondents (motion No. 199–1). The following unfair acts and unfair methods of competition were alleged with respect to the tubular anodes that these companies reportedly have manufactured abroad, exported to the United States, or sold to customers in the United States: (1) Common law trademark infringement; (2) direct, contributory, or induced infringement of at least claims 1, 4, 6, or 8 of U.S. Letters Patent 4,096,051; or (3) false designation of country of origin. The Commission investigative attorney supported the addition of Jennings Winch and Hugh Jennings but opposed the addition of Richards.

On September 20, 1984, the Commission investigative attorney moved to add Harco Corp. as a respondent, alleging that Harco is the consignee and exclusive distributor of Jennings Winch tubular anodes imported into the United States, and is responsible for the sale of such anodes in the United States (motion No. 199–2). The motion was unopposed.

On October 4, 1984, the presiding officer issued an ID granting both motions (Order No. 1). No comments on the ID were filed by other Federal agencies, and no petitions for review were filed by the parties. On November 5, 1984, the Commission determined that review of the ID on the Commission's own motion under 19 CFR 210.55 was not warranted.

Public Inspection. Copies of the ID, the motions to amend the complaint and notice of investigation, and all other nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0471.

Issued: November 7, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–30065 Filed 11–14–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–157 and 160 (Final)]

Carbon Steel Wire Rod From Argentina and Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(1)), that an industry in the United States is materially injured by reason of imports from Argentina and Spain of carbon steel wire rod, provided for in item 607.17 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

The Commission also determines,[3] pursuant to section 735(b)(4)(A) of the Tariff Act of 1930, that there is not material injury by reason of massive imports of this product to an extent that it is necessary to impose the duties retroactively.

Background

The Commission instituted these investigations effective May 8, 1984, following preliminary determinations by the Department of Commerce that imports of carbon steel wire rod from Argentina and Spain were being sold in the United States at LTFV.

Notice of the institution of the Commission's investigations and of a hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on May 31, 1984 (49 FR 22722), and on June 20, 1984 (49 FR 25317). The Commission's hearing was held in Washington, DC, on September 25, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on these investigations to the Secretary of Commerce on November 5, 1984. A public version of the Commission's report, Carbon Steel Wire Rod from

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[1] The record is defined in section 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler dissenting.

[3] Commissioner Eckes dissenting.

Argentina and Spain (investigations Nos. 731–TA–157 and 160 (Final), USITC Publication 1598, 1984) contains the views of the Commission and information developed during the investigations.

Issued: November 5, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–30064 Filed 11–14–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–170]

Certain Bag Closure Clips; Issuance of Exclusion Order

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has issued a general exclusion order in the above-captioned investigation.

SUMMARY: By virtue of the Commission's decision not to review the presiding officer's August 9, 1984, initial determination, the subject investigation resulted in a Commission determination that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain bag closure clips. The Commission found that respondent Hoan Housewares, Inc., had engaged in unfair acts in connection with the importation and sale of certain bag closure clips that would infringe the claims of U.S. Letters Patent Nos. 4,356,600 and 4,394,791. Such unfair acts were found to substantially injure an industry, efficiently and economically operated, in the United States.

A notice soliciting written comments on the issues of remedy, the public interest, and bonding was published in the **Federal Register** of September 12, 1984. Submissions were received from complainant and the Commission investigative attorney.

On November 9, 1984, the Commission determined that a general exclusion order pursuant to section 337(d) is the appropriate remedy; that the public interest considerations enumerated in section 337(d) do not preclude such relief; and that the amount of the bond during the Presidential review period under section 337(h) shall be 130 percent of the entered value of the imported articles.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1627.

SUPPLEMENTARY INFORMATION: Authority for this action is based upon 19 U.S.C. 1337. Copies of the Commission's Action and Order, its Opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued November 9, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–30056 Filed 11–14–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–207 (Preliminary)]

Cellular Mobile Telephones and Subassemblies Thereof From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–207 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of cellular mobile telephones and subassemblies thereof, provided for in items 685.23 and 685.29 of the Tariff Schedules of the United States (TSUS),[1] which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 20, 1984.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 5, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Schechter (202–523–0300) or Mr. Larry Reavis (523–0296), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on November 5, 1984, by Motorola, Inc., Schaumburg, IL.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR § 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on November 28, 1984, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Mr. Larry Reavis (202–523–0296) not later than November 26, 1984, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before December 3, 1984, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the

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[1] Section 124 of Pub. L. 98–573 (October 30, 1984) redesignated these TSUS items (effective January 1, 1985) as follows (old item number/new item number): 685.2350/685.12, 685.2970/685.30, and 685.2976/685.28.

Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: November 9, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30059 Filed 11-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-224 (Preliminary)]

Live Swine and Fresh, Chilled and Frozen Pork From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary countervailing duty investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-224 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of live swine and of fresh, chilled and frozen meat (except meat offal) of swine, provided for in items 100.85 and 106.40, respectively, of the Tariff Schedules of the United States, which are alleged to be subsidized by the Government of Canada. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by December 17, 1984.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 2, 1984.

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202-523-0286), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on November 2, 1984 by counsel on behalf of members of The National Pork Producers Council, Des Moines, Iowa.

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR § 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 26, 1984 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Lawrence Rausch (202-523-0286) not later than November 21, 1984 to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before November 28, 1984 a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: November 9, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-30060 Filed 11-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-165]

Certain Alkaline Batteries; Issuance of Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has issued a general exclusion order in the above-captioned investigation.

Authority: 419 U.S.C. 1337.

SUPPLEMENTARY INFORMATION: The Commission determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain alkaline batteries. The Commission found that all respondents had engaged in unfair acts by reason of registered trademark infringement, misappropriation of trade dress, and false designation of origin in the unauthorized importation and sale of certain alkaline batteries with the DURACELL trademark and trade dress, and that all respondents, except for respondent Continent-Wide Enterprises,

Ltd., had committed unfair acts by reason of violation of the Fair Packaging and Labeling Act (15 U.S.C. 1452 and 1453.

The Commission determined that a general exclusion order pursuant to section 337(d) is the appropriate remedy for the violations of section 337 found to exist; that the public interest considerations enumerated in section 337(d) do not preclude such relief; and that the amount of the bond during the Presidential review period under section 337(g) shall be 75 percent of the entered value of the imported articles.

Copies of the Commission's Action and Order, the Opinions issued in connection therewith, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0471.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0499.

Issued: November 5, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–30061 Filed 11–14–84; 8:45 am]

BILLING CODE 7020–02–M

[Investigation Nos. 731–TA–161 and 162 (Final)]

Titanium Sponge From Japan and the United Kingdom

Determinations

On the basis of the record [1] developed in investigation No. 731–TA–161 (Final), the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is threatened with material injury by reason of imports from Japan of titanium sponge,[3] which the Department of Commerce has found are being, or are likely to be, sold in the United States at less than fair value (LTFV). Pursuant to section 736 of the Tariff Act of 1930 (19 U.S.C. 1673e(b) (1980)), the Commission further determines that the threat of material injury would not have led to a finding of material injury but for the suspension of liquidation under section 1673b(d)(1).

On the basis of the record [1] developed in investigation No. 731–TA–162 (Final), the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930, that an industry in the United States is not materially injured or threatened with material injury, nor is the establishment of an industry in the United States materially retarded, by reason of imports from the United Kingdom of titanium sponge [3] which the Department of Commerce has found are being, or are likely to be, sold in the United States at LTFV.

Background

The Commission instituted these final antidumping investigations, effective May 11, 1984, following preliminary determinations by the Department of Commerce that imports of titanium sponge from Japan and the United Kingdom are being, or are likely to be, sold in the United States at LTFV (49 FR 20042). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 31, 1984 (49 FR 22724). Following a 60-day extension of its final determinations by the Department of Commerce, the Commission revised its hearing date (**Federal Register** of July 18, 1984, 49 FR 29167). The hearing was held in Washington, DC, on September 26, 1984, and all persons who requested the opportunity were permitted to appear in person or to be represented by counsel. Commerce published its affirmative final LTFV determinations in the **Federal Register** on October 1, 1984 (49 FR 38384). The Commission's determinations in these investigations were made in an open "Government in the Sunshine" meeting, held on October 29, 1984.

The Commission transmitted its report on these investigations to the Secretary of Commerce on November 7, 1984. A public version of the Commission's report, Titanium Sponge from Japan and the United Kingdom, (investigations Nos. 731–TA–161 and 162 (Final), USITC Publication 1600, November 1984) contains the views of the Commission and information gathered during the investigations.

Issued: November 7, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[Investigation No. 337–TA–193]

Certain Rowing Machines and Components Thereof; Prehearing Conference

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on December 17, 1984, in Hearing Room 6311 at the Interstate Commerce Commission Building at 12th & Constitution Avenue, NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: November 2, 1984.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 84–3063 Filed 11–14–84; 8:45 am]

BILLING CODE 7020–02–M

Termination of Countervailing Duty Investigation Concerning Vitamin K From Spain

AGENCY: United States International Trade Commission.

ACTION: Termination of countervailing duty investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with regard to Vitamin K from Spain.

EFFECTIVE DATE: November 8, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, telephone number (202) 523–0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such an industry would be materially retarded, if the order were to be revoked. On June 17, 1982, the Commission received a request from the Government of Spain for the review of the outstanding countervailing duty order on Vitamin K from Spain. Notice of the countervailing duty order was published on November 16, 1976 in the **Federal Register** (41 FR 50419).

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[1] The "record" is defined in § 207.2(i) of the Commisssion's *Rules of Practice and Procedure* (19 CFR 207.2(i)).

[2] Chairwoman Stern and Vice Chairman Liebeler dissenting.

[3] Titanium sponge is provided for in items 629.14 and 633.00 of the Tariff Schedules of the United States.

On September 11, 1984, the Commission was notified by letter that the Heterochemical Corp., the original petitioner for the countervailing duty order, wished to withdraw its request for the imposition of countervailing duties under the above referenced countervailing duty order.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a transition case investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. That section directs the Commission to solicit public comment prior to termination and approve such termination only if it is in the public interest. Termniation authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders.

On September 26, 1984, (49 FR 37861) the Commission published a notice in the **Federal Register** requesting public comment by October 26, 1984, on the proposed termination of the Commission investigation on Vitamin K from spain. No adverse comments were received in response to the Commission's notice.

The Commission is therefore terminating its investigation on Vitamin K from Spain (T.D. 76–321). The termination of this investigation has the same effect as a determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, if the countervailing duty order were to be revoked.

In addition to publishing this **Federal Register** notice, the Commission is serving a copy of this notice on all persons who have written the agency in connection with this investigation and is also notifying the Department of Commerce of its action in this case.

Issued: November 9, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84–30057 Filed 11–14–84; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35 is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Lee Campbell (202) 275–7238. Comments regarding this information collection should be addressed to Lee Campbell, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: Extension
Bureau/Office: Office of Proceedings
Title of Form: Small Carrier Transfer Application
OMB Form No.: 3120–0025
Agency Form No.: OP–FC–1
Frequency: Non-recurring
Respondents: Motor Carriers: Transferring or merging
No. of Respondents: 810
Total Burden Hrs.: 6,480

James H. Bayne,

Secretary.

[FR Doc. 84–29958 Filed 11–14–84; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 28640 (Sub-9), et al.][1]

Chicago, Milwaukee, St. Paul and Pacific Railroad Co.; Reorganization, Acquisition by Grand Trunk Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Schedule of proceedings on amended acquisition and reorganization proposal.

SUMMARY: The Commission sets a procedural schedule on the amended application filed under section 5(b) of the Milwaukee Railroad Restructuring Act, 45 U.S.C. 904(b)(MRR) and reorganization plan filed under section 77 of the Bankruptcy Act by the Chicago and North Western Transportation Company (CNW) to acquire and operate the core assets of the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company (MILW). CNW's proposals were transmitted to the Commission by Order No. 782 issued November 1, 1984, by MILW's Reorganization Court.

DATES: Verified statements in support, opposition, or requesting conditions to CNW's amended proposals are due November 21, 1984. Verified reply statements are due November 28, 1984.

ADDRESSES: An original and 20 copies of all pleadings referring to Finance Docket No. 28640 (Sub-No. 9) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Copies must also be served on all parties of record in Finance Docket No. 28640 (Sub-No. 9). A current list of parties of record will be served on November 15, 1984.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275–7245

or

Joseph C. Levin, (202) 275–7936.

SUPPLEMENTARY INFORMATION: The Commission's decision served September 26, 1984, returned to MILW's Reorganization Court without action CNW's reorganization and acquisition proposals and related exemption requests identified as Finance Docket No. 28640 (Sub-Nos. 9 C, D, E, Q, and S) and No. MC–F–15231 (Sub-No. 1).

On October 9, 1984, CNW submitted to MILW's Reorganization Court amendments to its MRR application to acquire and operate MILW's core assets. The principal amendment increased the consideration CNW offers for MILW's core assets. In Order No. 782, MILW's Reorganization Court referred the amended application for our consideration under section 5 of the MRR and section 77 of the Bankruptcy Act. The Court directed us to transmit to it our decision on CNW's amended MRR application and reorganization plan within 60 days of CNW's filing with us. This is January 7, 1985, assuming a November 7, 1984 filing, and our acceptance of the application.

CNW's amended MRR application and reorganization plan will be considered under section 77 of the Bankruptcy Act, section 5(b) of MRR, and 49 U.S.C. 11344(b). The statutory criteria are set forth on pages 43–48 of our September 26th decision.

In view of the limited time given us by the Court, we have established an expedited procedural schedule. No extensions will be granted and dilatory tactics will not be tolerated.

Parties are requested to use hand delivery, express mail, or overnight package delivery for service of pleadings on principal parties. Since a substantial record has already been developed, parties are strongly encouraged to incorporate previously filed material by reference and confine new evidence and argument to issues raised by CNW's amended MRR application.

The procedures prescribed in our April 29, 1983 decision for interlocutory appeals, discovery, and other matters will be followed in considering CNW's

[1] Embraces Finance Docket No. 28640 (Subs Nos. 9A–E, 9K–N, 9P–BB) and Nos. MC–F–15231 and MC–F–15231 (Sub-Nos. 1 and 2).

amended MRR application.
Administrative Law Judge Paul Cross will continue to handle procedural matters that might arise.

The following procedural schedule is adopted:

November 21, 1984—All verified statements in support, opposition or seeking protective conditions must be filed.
November 28, 1984—All verified statements must be filed in reply to the November 21st filing.
November 30, 1984—All requests for cross-examination must be filed.
December 5, 1984—Cross-examination, if any, begins.
December 11, 1984—Simultaneous briefs must be filed.
December 17, 1984—Oral argument before the Commission.
December 20, 1984—Open voting conference.
December 21, 1984—Issuance of summary decision reflecting voting conference.
January 7, 1985—Issuance of final decision with rationale.

This decision will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. All parties shall observe the procedural schedule prescribed in this decision.

2. The general protective order in Ordering paragraphs 4 and 5 of our April 29, 1983, decision will also apply to CNW's amended MRR application.

3. This decision is effective on November 13, 1984.

Decided: November 7, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

FR Doc. 84-29956 Filed 11-14-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket Nos. AB-69 (Sub-14), AB-19 (Sub-69)]

Western Maryland; Railway Co. and the Baltimore and Ohio Railroad Co. Abandonment and Dicontinuance of Service in Tucker and Randolph Counties, WV; Findings

The Commission has found that the public convenience and necessity permit the abandonment by the Western Maryland Railway Company of that portion of the Thomas Subdivision between Valuation Station 4583+48 (milepost 86.81), at or near Hendrick, and Valuation Station 5881+00 (milepost 111.39), at or near Elkins, a distance of 24.58 miles in Tucker and Randolph Counties, WV, and the discontinuance of service over that line by the Baltimore and Ohio Railroad Company. A certificate will be issued authorizing this abandonment and discontinuance unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27

James H. Bayne,

Secretary.

[FR Doc. 84-29957 Filed 11-14-84; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report, Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reogranization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued the periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 7, No. 2).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health and safety." The NRC has made a determination, based on critieria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the second calendar quarter of 1984. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there was one abnormal occurrence at the nuclear power plants licensed to operate; the event involved an inoperable containment spray system. There was one abnormal occurrence at the other NRC licensees; the event involved a therapeutic medical misadministration. There were no abnormal occurrences reported by the Agreement States.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW, Washington, DC or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies or microfiche of NUREG-0090, Vol 7, No. 2 (or any of the previous reports in this series), may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A year's subscription to the NUREG-0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, MasterCard, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC this 6th day of November 1984.

For the Nuclear Regulatory Commission

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-30008 Filed 11-14-84; 8:45 am]

BILLING CODE 7590-01-M

Availability of Draft Issue-Oriented Site Technical Positions in the High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of Issue-Oriented Site Technical Positions (ISTPs) for the following potential geologic repository sites:

- Basalt Waste Isolation Project (BWIP)
- Nevada Nuclear Waste Storage Investigations (NNWSI)

- Salt Repository Project (SRP)

Permian Basin Sites
Paradox Basin Sites
Gulf Coast Dome Sites

The ISTPs address site issues in the areas of geology/geophysics, waste package, geologic repository operations area design/rock mechanics, hydrology, and geochemistry.

DATE: The comment period expires January 14, 1985.

ADDRESSES: Send comments to Hubert J. Miller, Chief, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail-Stop 623–SS, Washington, D.C. 20555. Copies of these documents may be obtained free of charge upon written request to Nancy Still, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail-Stop 623-SS, Washington, D.C. 20555, Telephone 1–800–368–5642, Ext. 74426 or 427–4426 for Washington area callers.

FOR FURTHER INFORMATION CONTACT: Hubert J. Miller, Chief, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 427–4177.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982, Pub. L. 97–425, (NWPA) and Commission Regulation 10 CFR Part 60 promote consultation between the Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These pre-licensing consultations are to fully inform DOE about the level of information that must be provided in a license application to allow a licensing decision to be made by NRC. Guidance to DOE will be provided in NRC Site Characterization Analyses (SCAs) which document staff reviews of DOE Site Characterization Plans to be submitted according to the NWPA and 10 CFR Part 60. Supplementary guidance is presented in staff technical positions on both generic and site-specific issues.

The Issue-Oriented Site Technical Positions noticed in this announcement identify and present the rationales for the detailed technical questions (licensing issues) that must be addressed prior to licensing for each of several potentially acceptable sites that have been identified by DOE.

This will allow a determination of site and design suitability in terms of 10 CFR Part 60. They have been developed through a systematic and comprehensive assessment of the overall geological repository system and its components and, based on current knowledge, identify those site issues that the NRC staff considers will be needed as a minimum to address 10 CFR Part 60, Subpart E.

Although submission of a license application by DOE is not expected for several years, these ISTPs are being issued at this early stage of the prelicensing consultation and guidance process for several reasons:

(1) The issues presented will serve as a set of benchmarks against which the NRC staff can independently review the relevance and completeness of issues identified by DOE in the Site Characterization Plans (SCPs).

(2) The issues provide a systematic structure for staff guidance to DOE for tracking the progress toward addressing staff concerns about licensing throughout the site characterization process. The intent is to establish a tracking system which ties together all of the various documents that are pertinent to a given issue.

(3) Finally, the issues provide a systematic and logical framework for NRC staff to organize the ultimate task of assessing geologic repository performance and compliance with criteria of 10 CFR Part 60.

The ISTPs will be followed by more detailed Site Technical Positions (STPs) which address one or more specific licensing issues. Items to be addressed in STPs include specific data, information needs, methods of data collection and analyses, and treatment of uncertainties.

This announcement provides notice of availability and solicits comments on the aforementioned draft Issue-Oriented Site Technical Positions.

Dated at Silver Spring, Maryland, this 2nd day of November 1984.

For the Nuclear Regulatory Commission.

John J. Linehan,

Acting Chief, Repository Projects Branch, Division of Waste Management.

[FR Doc. 84–29992 Filed 11–14–84; 8:45 am]

BILLING CODE 7590–01–M

Availability of Technical Position in High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has completed a technical position on the "Determination of Radionuclide Solubility in Groundwater for Assessment of High-level Radionuclide Waste isolation."

ADDRESS: Copies of this document may be obtained free of charge upon written request to Nancy Still, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623–SS, Washington, DC 20555, Telephone 1 (800) 368–5642, Ext. 74426, or 427–4426 for Washington, DC callers.

FOR FURTHER INFORMATION CONTACT: John W. Bradbury, Project Manager, Geotechnical Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Telephone No. (301) 427–4055.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982, Pub. L. 97–425, (NWPA) and Commission regulation 10 CFR Part 60 promote interaction between the Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interactions are to fully inform DOE about the level of information that must be provided in a license application to allow a licensing decision to be made by NRC. Guidance to DOE is provided in NRC Site Characterization Analyses (SCA's) which document staff reviews of DOE Site Charaterization Plans submitted according to the NWPA and 10 CFR Part 60. On selected key issues important to repository performance, the staff will be addressing generic concerns in technical positions. The intent of the staff is to ensure that guidance is provided to DOE at an early time and thus ensure that the DOE gathers needed data in site characterization programs.

This technical position is one in a series of technical positions prepared by the NRC staff establishing what should be achieved by DOE in investigation programs at potential repository sites. The purpose of this technical position is to provide guidance concerning an acceptable strategy for obtaining data on radionuclide solubility. The NRC staff considers that the approach used for determining the solubility of radionuclides which will be present in a high level waste repository is key to providing the data needed for predicting long term repository performance.

Dated at Silver Spring, Maryland, this 2nd day of November 1984.

For the Nuclear Regulatory Commission.

R. John Starmer,

Acting Branch Chief, Geotechnical Branch, Division of Waste Management, NMSS.

[FR Doc. 84–29993 Filed 11–14–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-354]

Public Service Electric and Gas Company; Availability of Safety Evaluation Report

Notice is hereby given that the Office of Nuclear Reactor Regulation has published its Safety Evaluation Report on the proposed operation of Hope Creek Generating Station located on the Delaware River Estuary in Lower Alloways Creek Township, Salem County, New Jersey. Notice of receipt of the application of Public Service Electric and Gas Company to operate Hope Creek Generating Station was published in the **Federal Register** on August 10, 1983 (48 FR 36357-36358).

The report is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Pennsville Public Library, 190 South Broadway, Pennsville, New Jersey 08070 for inspection and copying. The report (NUREG-1048) can also be purchased, at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, DC.

Dated at Bethesda, Maryland this 8th day of November 1984.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 84-29990 Filed 11-14-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Cost of Hospital and Medical Care and Treatment Furnished by the United States, Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by section 2(a) of the Act of September 25, 1962 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget by Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the following three sets of rates are established for use in connection with the recovery, as authorized by such Act, from tortiously liable third persons of the cost of hospital and medical care and treatment furnished by the United States (part 43 of Chapter I of Title 28 of the Code of Federal Regulations) through three separate Federal agencies. These rates have been established in accordance with the requirements of OMB Circular A-25, requiring reimbursement for full cost of all services provided. This has been determined as follows:

(a) for the Department of Defense—historical costs and workload data provided through the Uniform Chart of Accounts (UCA) reporting system provides an operating cost base to which are added systemwide costs and allowances for actual inflation and pay raises to obtain the estimates for the fiscal year under review. The costs added are those items required by OMB circular A-25: (1) Retirement for military personnel—51% of the basic pay of the military personnel; (2) retirement for civilian personnel—22.5% of the pay of the civilian personnel; (3) an asset charge of 4% of the other costs in lieu of a specific depreciation cost on fixed assets; and (4) a 3% surcharge for the cost to DOD of administering the Medical care program.

(b) for the Veterans Administration—the actual costs and per diem rates by type of care for the previous year are added to the estimated costs for depreciation of buildings and equipment, administrative overhead, interest on capital investment, and Government employee retirement and disability charges. These computed rates are then adjusted by the budgeted percentage change to arrive at the estimated rates for the fiscal year under review.

(c) for the Department of Health and Human Services—using data collected for the first six months of fiscal year 1984, the sum of obligations for each cost center providing medical services is broken down into amounts attributable to inpatient care on the basis of the proportion of staff devoted to each. Total inpatient costs and outpatient costs thus determined are divided by the relevant workload statistic (inpatient day, outpatient visit) to produce the inpatient and outpatient rates. These rates are then adjusted by the budgeted percentage change to arrive at the FY 1985 rate. In calculating the rates, the Department's unfunded retirement liability costs, and capital and equipment depreciation costs were incorporated to conform to requirements contained in OMB Circular A-25. In addition, for the first time, cost centers' obligations include all costs from all accounts. Previously, certain accounts—such as Medicare and Medicaid collections, and contract Health funds used to support direct operations—were not included in the base. Inclusion of these funds yields a more accurate indication of the cost of care in HHS facilities.

These rates represent the reasonable cost of hospital, nursing home, medical, surgical or dental care and treatment (including prostheses and medical applicances) furnished or to be furnished:

(a) For such care and treatment furnished by the United States in Federal hospitals, nursing homes, and outpatient clinics, administered by any of the three Federal agencies—Department of Defense, Veterans Administration or Department of Health and Human Services.

(b) For such care and treatment furnished at Government expense in a facility not operated by the United States, the rates shall be amounts expended by the United States for such care and treatment.

	Effective Oct. 1, 1984		
	DOD	VA	HHS
Hospital care per inpatient day:			
General medical care	$452	$375	$596
Surgical care	452	405	596
Psychiatric care		310	260
Nursing home care		139	
Spinal cord injury care		307	
Burn Center, U.S. Army Institute of Surgical Research, Brooke Army Medical Center, Fort Sam Houston, TX	1,368		
Outpatient medical and dental treatment: Per outpatient visit	56	75	72

For the period beginning October 1, 1984, the rates prescribed herein supersede those established by the Director of the Office of management and budget on November 2, 1983 (48 FR 50642).

Dated: November 1, 1984.

David A. Stockman,

Director, Office of Management and Budget.

[FR Doc. 84-29683 Filed 11-14-84; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by OMB

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2412.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Service, Washington, D.C. 20549.

Revision

Proposed Amendments to Form N-1A

No. 270-21

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance proposed amendments to form N–1A (17 CFR 239.15A, 274.11A) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) which would consolidate all narrative information in open-end management investment companies' prospectuses concerning significant expenses and add a tabular presentation of the major fees.

The potential respondents are approximately 810 registered open-end management investment companies.

Submit comments to OMB Desk Officer: Ms. Katie Lewin (202) 395–7231.

Shirley E. Hollis,

Acting Secretary.

November 9, 1984.

FR Doc. 84–30011, Filed 11–14–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 23474; 70–7040]

The Connecticut Light and Power Company; Proposal To Finance Pollution Control Facilities; Exception From Competitive Bidding

November 8, 1984.

The Connecticut Light and Power Company ("CL&P"), a subsidiary of Northeast Utilities ("NU"), Selden Street, Berlin, Connecticut 06037, a registered holding company, has proposed a transaction subject to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

CL&P proposes to finance its 4.06 percent portion of the cost of acquiring, constructing, and installing pollution control facilities ("Facilities") at the Seabrook Nuclear Power Station, Unit No. 1 in Seabrook, New Hampshire. The Industrial Development Authority of the State of New Hampshire, ("Issuer") will issue pollution control revenue demand bonds ("Bonds") in the principal amount of not more than $12,000,000, interest on which is intended to be exempt from federal and New Hampshire income taxation. The Bonds will be issued under an Indenture of Trust ("Indenture") between the Issuer and BayBank Middlesex, as trustee ("Trustee"), setting out the terms of the Bonds. Pursuant to a Financing Agreement between CL&P and the Issuer ("Financing Agreement"), the Issuer would loan to CL&P the proceeds of the Bonds. CL&P would agree to make payments corresponding to the amounts needed to pay the principal, interest, and premium, if any, on the Bonds as they become due. The obligation of CL&P to repay its loan will be evidenced by a promissory note ("Note").

The Financing Agreement and the Indenture would provide that the monies receivable from CL&P by the Issuer under the Financing Agreement are to be pledged and assigned to the Trustee. The Financing Agreement would also obligate CL&P to pay the fees and charges of the Issuer and Trustee. The proceeds of the Bonds would be deposited with the Trustee. From a fund established under the Indenture, CL&P would draw the proceeds of the Bonds to pay, or to reimburse itself for, its portion of the cost of acquiring, constructing, and installing the Facilities. The Bonds would not be general obligations of the Issuer or the State of New Hampshire; the principal, interest, and premium, if any, on the Bonds would be payable only from the revenue pledged for their payment under the Financing Agreement and the Indenture.

The Bonds will be issued with a variable interest rate as Floating Rate Demand Bonds ("FRDB"), with a maturity date not more than thirty years from the date of issuance. The interest rate on the Bonds, and the corresponding rate on CL&P's loan from the Issuer, will be determined by Citibank N.A. ("Agent") pursuant to a Remarketing Agreement between it, the Trustee, and CL&P. The Agent will determine the rate for each seven-day interest period at a rate which would result in the market value of the Bonds being 100 percent of principal, considering rates of comparable securities and general financial conditions. The rate may not exceed 20 percent annually, and similar CL&P issuances had a rate of 6.80 percent as of October 16, 1984.

On a one-time basis, at the option of CL&P, the variable interest rate may be converted to a fixed rate upon 40 days written notice. The Indenture also provides an automatic conversion to a fixed interest rate under certain circumstances on the interest payment date immediately preceding the expiration of the Letter of Credit described below. The fixed interest rate would be determined by the Agent not less than ten business days prior to the conversion date. It would be that rate which would result in the market value of the Bonds on such date being 100 percent of the principal. Prior to any such conversion, Bondholders have an option to tender Bonds to the Agent for payment of principal and accrued interest from the resale of the Bonds, or failing resale, from funds drawn by the Trustee on an irrevocable Letter of Credit. CL&P will fully reimburse the Agent pursuant to the terms of the Letter of Credit securing the Financing Agreement, and pursuant to a Reimbursement Agreement.

Pursuant to the Letter of Credit and Reimbursement Agreement, CL&P would agree to immediately repay all amounts that are drawn under the Letter of Credit except such drawings pursuant to tenders, or to certain redemptions of Bonds. If, in connection with a drawing due to the partial redemption or tender of Bonds, certain specified conditions are fulfilled, the amount drawn would be payable on the first to occur of the fifth anniversary of the date of the drawing or the termination of the Letter of Credit. Under such circumstances, interest on the drawing would be payable according to the following schedule: (A) for the first three years after such drawing is made, the interest rate would be, at CL&P's election with respect to each such drawing, either (i) the Bank's Alternate Base Rate (which is the higher of (a) the rate of interest announced publicly by the Bank as its base rate or (b) one-half of one percent above the latest three-week moving average of secondary market morning offering rates for three-month certificates of deposit of major U.S. money market banks, rounded up to the nearest one-quarter percent as in effect from time to time), (ii) five-eighths of one percent above the Domestic Money Market Bid Rate, and (B) for the fourth and fifth year after such drawing is made, the interest rate would be either one-eighth of one percent above the Bank's Alternate Base Rate, three-quarters of one percent above the Domestic Money Market Bid Rate, or the Reference Rate. If all but certain of the specified conditions have been fulfilled, amounts drawn on the Letter of Credit would be payable one year after the date of drawing. Interest on such drawings would be at the Bank's Alternate Base Rate plus one percent per annum. Delivery of the letter of Credit to the Trustee would obtain for the Bonds a rating equivalent to the credit rating of the Bank. The Letter of Credit will expire ten years from the date of issuance, but can be extended by the Bank.

The Issuer can redeem the Bonds, in whole or in part, prior to a conversion and on thirty days notice, in the amount of principle and accrued interest. Thereafter, redemption is at the election of the Issuer at redemption prices scheduled in the Indenture. The Bonds must be redeemed, in whole and not in part, at CL&P's option, with accrued interest but without premium, if certain

extraordinary events (such as damage or destruction to the Facilities or the plant at which the Facilities are located) shall have occurred. In addition, the Bonds must be redeemed, in whole or in part, with accrued interest but without premium, upon a determination that the interest on the Bonds is taxable for federal income tax purposes; the occurrence of certain specified changes in law that render performance of the Financing Agreement impossible; or the expiration of the Letter of Credit. If a default were declared under the Indenture, the principle of all outstanding Bonds could be declared due and payable as provided in the Indenture, plus accrued interest, but without premium.

CL&P requests an exception under Rule 50(a)(5) regarding borrowings made under the Financing Agreement because competitive bidding is inappropriate in these circumstances.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 3, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30013 Filed 11-14-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23473; 70-7039]

Middle South Services, Inc. et al.; Proposed Issuance and Sale of Note to Bank by Subsidiary Service Company and Guaranty by Holding Company

November 8, 1984.

Middle South Utilities, Inc. ("Middle South"), a registered holding company, and Middle South Services, Inc. ("Services"), 225 Baronne Street, New Orleans, Louisiana 70112, a subsidiary service company of Middle South, have filed a proposal with this Commission pursuant to sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

Services proposes to borrow and reborrow, pursuant to a revolving credit agreement ("Credit Agreement") with Hibernia National Bank, New Orleans, Louisiana ("Bank") up to an aggregate principal amount at any one time outstanding not to exceed $30,000,000. The Termination Date of the Bank's Commitment is December 31, 1987. The borrowings will be evidenced by a single note of Services representing the obligation of Services to pay the amount of the Bank's commitment ($30,000,000) or, if less, the aggregate unpaid principal amount of all loans made by the Bank thereunder, plus accrued interest. As an inducement to the Bank to make loans to Services under the Credit Agreement, Middle South proposes to guarantee the payment by Services of the unpaid principal amount of, and interest on, the note and the performance by Services of its obligations under the Credit Agreement.

In general, loans under the Credit Agreement will bear interest on the unpaid principal amount thereof at a rate per annum equivalent to either one of two floating rates or a fixed rate, as specified by Services from time to time upon proper notice to the Bank. As used in the Credit Agreement, the two floating rate options are the federal funds rate ("Federal Funds Rate") and the prime rate ("Prime Rate"). The Federal Funds Rate is defined to mean the rate which is 1% above the daily federal funds effective rate from time to time as quoted by the Federal Reserve Bank of New York. The Prime Rate is defined to mean the rate of interest announced publicly by Citibank from time to time as its base rate. With respect to fixed rate loans, Services may select a rate per annum equivalent to ¾ of 1% above the consensus bid rate of New York Certificate of deposit dealers for the purchase at face value of certificates of deposit of Citibank in an amount approximately equal or comparable to the amount of any such loans and with a maturity equal to the selected interest period, adjusted for reserves and F.D.I.C. insurance ("CD Rate"). In advance of each loan to Services under the Credit Agreement, Services will give proper notice to the Bank specifying whether such loan will bear interest at the Federal Funds Rate, the Prime Rate, or the CD Rate and, as to a CD Rate loan, the selected interest period (30, 60, or 90 days, in each case as specified by Services) applicable to such loan. For the Bank's commitment under the Credit Agreement, Services will pay to the Bank a commitment fee for the period from the Effective Date to the Termination Date or earlier termination of the Commitment, computed at the rate of ⅜ of 1% per annum on the average daily unused portion of the Commitment. The terms of the Credit Agreement will not require that Services maintain compensating balances with the Bank. It is expected, however, that Services will maintain working balances with the Bank. Based on a Prime Rate of 12% and assuming full utilization of the line, the maximum effective cost of money would be 12%.

It is stated that the proceeds of the proposed note to the Bank will be used by Services to repay any outstanding borrowings from Citibank at maturity and to finance other expenditures in connection with the performance by Services of its functions as a subsidiary service company.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 5, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30012 Filed 11-14-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21471; File No. 4-256]

Institutional Networks Corp., and National Association of Securities Dealers, Inc.; Order Denying Request for Reconsideration

November 8, 1984.

I. Background

On April 17, 1984, the Commission issued an order ("April Order")

announcing Commission findings with respect to a fee dispute between the National Association of Securities Dealers, Inc. ("NASD") and the Institutional Networks Corporation ("Instinet").[1] The proceeding, which was instituted on August 16, 1983,[2] consists of Commission review, pursuant to Section 11A(b)(5) of the Securities Exchange Act of 1934 ("Act"), of proposed fees of the NASD for full information on quotations disseminated through NASDAQ in securities designated as national market system ("NMS") Securities. The NASD collects and distributes this information both directly to retail subscribers and to competing vendors who resell the information to subscribers. The NASD denotes the service provided to vendors as the National Quotation Data Service ("NQDS").[3] Presently, Instinet is the only vendor that has sought access to NQDS.

In the April Order, the Commission determined that, because Instinet sought to distribute certain NASDAQ quotation information in competition with the NASD, which is an exclusive processor of that information, the proposed fees must be cost-based to ensure the neutrality and reasonableness of the NASD's charges to Instinet and its subscribers. Under this analysis, the Commission approved the NASD's NQDS vendor fee, but disapproved the NASD's proposed NQDS subscriber fee [4] because that fee was based in part on costs related to functions not used in supplying quotation data to Instinet.

The April Order also extended and modified interim relief to Instinet by dissolving an escrow arrangement [5] and providing that Instinet pay directly to the NASD subscriber fees based on the NASD's Level 1 service fee, which the Commission found to be functionally the most analogous service to NQDS. Finally, the April Order announced the commencement of a denial of access proceeding pursuant to Section 11A of the Act regarding the NASD's proposed NQDS subscriber fee for all NASDAQ securities.[6]

On June 11, 1984, the NASD filed a motion requesting Commission reconsideration [7] of one finding made in that Order. Instinet submitted a response to the NASD's Motion on August 3, 1984.[8]

II. NASD's Request for Reconsideration

A. NASD Motion

The NASD Motion indicates that the NASD plans on submitting to the Commission a rule change proposing subscriber fees that it deems consistent with the April Order. To assist the preparation of this fee filing, the NASD Motion specifically requests the Commission to reconsider its decision that costs related to the query function, which requires the maintenance of a database to store quotations, are not properly allocable to the NQDS subscriber fee. The NASD believes that certain costs of maintaining the NASDAQ database, including regulatory costs associated with validation of quotations and ensuring that quotations do not lock or cross the market, are properly allocable to Instinet and its subscribers. In support of its request, the NASD argues that Instinet's subscribers should bear the costs associated with quotation queries as well as updates because it views such queries as an essential part of the quotation update function. Specifically, the NASD argues that market makers necessarily query NASDAQ Level 2 information provided over their NASDAQ terminals in deciding whether to maintian or change their quotations. The NASD states that access to the full quotation stream is necessary when considering a quotation update and that NASDAQ provides the only realistic method for most market makers to access that information. Supporting affidavits from 12 market makers accompanied the NASD Motion.

B. Instinet's Response

Instinet responded to the NASD's motion by stating that maintenance of the NASDAQ database to a large degree, is irrelevant to the data feed sought by Instinet for several reasons. First, Instinent points out that the data base contains more than just NASDAQ quotations. For example, the database contains lists of valid stock symbols, correlations of market makers and their designated issues, trade reports, and trades pending in the NASD's Computer Assisted Execution System ("CAES"). Second, Instinet notes that the database is used to calculate the inside market for NASDAQ Level 1 service, price CAES executions, calculate NASDAQ indices, and produce back-up files. Instinet also notes that not all NASDAQ terminals are used by market makers nor do market makers always use their terminals for market making; it notes that many firms make markets in a few stocks, but desire and receive access to quotation information in all NASDAQ stocks. Instinet suggests that database costs associated with quotation updates are small, but concludes that a functional analysis of database usage is necessary to reveal the precise amount of attributable costs. In addition, Instinet argues that it will be at a competitive disadvantage with the NASD if its subscribers must pay for the maintenance of the NASDAQ database because Instinet must recover the costs of building its own database in order to respond to subscriber queries.

Instinet also argues for the denial of the NASD Motion because (1) the motion was not timely filed, (2) it did not raise any new substance, and (3) it did not otherwise present any clear basis of error in the April Order.

C. Commission Determination

After carefully reviewing the NASD Motion and Instinet's Response, the Commission believes that the NASD Motion does not advance any new data or arguments to warrant Commission reconsideration of issues resolved in the

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[1] *See* Securities Exchange Act Release No. 20874 (April 17, 1984), 49 FR 17640. The Order also modified interim relief and instituted additional proceedings.

[2] *See* Securities Exchange Act Release No. 20888 (August 16, 1983), 48 FR 38124 ("Order Instituting Proceedings").

[3] In addition to NQDS, the NASD provides NASDAQ Levels 1, 2, and 3 services. NASDAQ Level 1 service provides the best bid and ask quotations in each NASDAQ stock. This service is provided exclusively to subscribers by vendors other than the NASD. NASDAQ Level 2 service provides full quotation data in each NASDAQ stock. NASDAQ Level 3 service is identical to Level 3 service, but includes the capability to input and update quotations in NASDAQ.

[4] The vendor fee was intended to recover direct computer and communication costs of transmitting quotation information from the NASD to Instinet. The subscriber fee was intended to recover from Instinet subscribers their allocable portion of the costs of operating the NASDAQ system.

[5] In the Order Instituting Proceedings, the Commission granted interim relief to Instinet by providing that Instinet pay into an escrow account amounts based on the NASD's proposed NQDS fees. Order Instituting Proceedings, *supra* note. 2 at 20–22.

[6] Prior to the April Order, Instinet requested expansion of NQDS to cover all NASDAQ securities. *See* Memorandum and Comments of Instinet, dated January 15, 1984.

[7] *See* Motion to George A. Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated June 11, 1984 ("NASD Motion"). On June 8, 1984, the NASD also filed a comment letter raising certain issues relating to the April Order. *See* Letter to George A. Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD. The Commission is responding separately to the matters discussed in the NASD's comment letter.

[8] *See* Response of Instinet to NASD's Request to Reconsider File Nos. 4–256 SR–NASD–83–13 submitted to SEC, from Daniel T. Brooks, Counsel to Instinet, dated August 3, 1984 ("Instinet Response"). On September 13, 1984, the NASD responded to procedural points raised in the Instinet Response. *See* Letter to Richard G. Ketchum, Director, Division of Market Regulation, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated September 13, 1984.

April Order.[9] In the April Order, the Commission specifically stated that "[t]he NASD, in effect, should recover only those costs it would incur if it operated a pure 'pass-through' system—a system that only collected information and passed it on to vendors. The NASD should not recover any costs related to its own competing vendor service." [10] In this regard, the Commission noted that:

> [t]here is no requirement that market makers recall NASDAQ quotation information through their NASDAQ terminals in connection with each quotation update. To the extent a market maker desires to recall quotation information before updating his quotation, he could choose to recall particular quotation information through Instinet terminals or inside quotation information through a variety of sources, without any reliance on the NASDAQ system's storage and recall functions.[11]

The Commission remains of this view. Specifically, the Commission continues to believe that costs related to the NASD's inquiry system, such as storing quotations for inquiry purposes and responding to actual inquiries, cannot be considered in developing the permanent NQDS subscriber charge.[12] While NASDAQ now may be the primary source for market makers to inquire as to the full quotation stream in a stock, there is no reason why that has to hold true for the future, especially after the NQDS is expanded to cover all NASDAQ securities and other vendors offer services in competition with Level 2. To allow the NASD to include quotation query costs would serve to perpetuate the *status quo* by increasing the cost of NQDS and discouraging competing services.[13]

Apart from the reasoning given in the April Order, the Commission further believes that even if market makers continue to use Level 3 service in connection with updating their quotations, inclusion of costs relating to the recall capabilities of the NASDAQ system would be inappropriate. NASDAQ market makers receive a unique benefit from the NASDAQ system, the ability to advertise their market on a national basis to professional and public investors. This ability is critical, not only to the liquidity of the OTC market, but also to the profitability of those market makers. Indeed, most large retail broker-dealers did not make markets in OTC securities prior to NASDAQ. While the commission has never objected to the NASD's decision to set Level 2 and 3 fees at the same level, notwithstanding the special benefits provided market makers by NASDAQ, there is simply no justification for a determination that NQDS subscribers should also subsidize NASDAQ market makers by paying for NASDAQ database costs necessary to provide a quotation recall service through NASDAQ, a service that Instinet must duplicate at its own expense and recover from its subscribers.

III. Order

On the basis of the above, pursuant to its authority under the Act, and particularly Sections 2, 3, 11, 11A, 15, 15A, 19, and 22 thereof, the Commission Hereby Orders that: the NASD's motion for Commission reconsideration of the April Order be, and hereby is, denied.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30015 Filed 11-14-84; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

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

ACTION: Notice of Grants and Denials of Applications for Exemptions:

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B, notice is hereby given of the exemptions granted in October 1984. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor Vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

Renewal and Party to Exemptions

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2587-P	DOT-E 2587	Connecticut Oxygen, Corporation, Stratford, CT.	49 CFR 173.315(a)(1)	To become a party to Exemption 2587. (Mode 1.)
3330-X	DOT-E 3330	General Electric Co., Schenectady, NY	49 CFR 173.214(d)	To authorize use of containers not presently prescribed in Hazardous Materials Regulations, for transportation of certain flammable solid material. (Modes 1, 2.)
3768-X	DOT-E 3768	Essex Industrial Chemicals, Inc., Baltimore, MD.	49 CFR 173.119, 173.245, 173.288	To authorize use of DOT Specification MC-304, MC-307 and MC-312 cargo tanks, for transportation of certain flammable and corrosive liquids. (Mode 1.)
4453-P	DOT-E 4453	Northern Ohio Explosives, Inc., Forest, OH.	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4453-P	DOT-E 4453	Wampum Supplies Co., New Galilee, PA	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)

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[9] On April 27, 1984, the NASD requested permission to file a motion seeking reconsideration of the April Order by May 31, 1984. *See* Letter to George Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated April 27, 1984. On May 31, 1984, the NASD requested an extension until June 7, 1984 by which to file the motion. *See* Letter to George A. Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated May 31, 1984. The Commission neither has granted nor denied these NASD requests. The Commission, however, believes that it is appropriate, as a discretionary matter, to review the NASD's request for reconsideration. In undertaking this review, the Commission is not representing that it will entertain motions for rehearing or requests for extensions to file such motions in future proceedings instituted under Section 11A(b)(5) of the Act.

[10] April Order, *supra* note 1, 49 FR at 17649.

[11] *Id.*

[12] With respect to costs associated with quotation validation and checking quotations for excess spread and whether they lock or cross the market, the Commission stated in the April Order that these are costs generally attributable to quotation validation and that "validation of the quotation information within specified pre-existing parameters and in the correct format is a proper function of a marketplace, and thus may be considered part of the quotation collection system." April Order, *supra* note 1, 45 FR at 17649. This analysis must include an explanation of the percentage allocated to validation, where that function is only one of many uses of a particular capability of the NASDAQ system.

[13] In this regard, the Commission noted in the April Order that "[w]hile all NASDAQ and NQDS subscribers receive NASDAQ market maker quotation information, the fact remains that NASDAQ subscribers are provided a recall service, which Instinet must provide its subscribers at a separate cost." *Id.* Thus, to include data storage costs in the fee calculation for NQDS would place Instinet at a competitive disadvantage.

Renewal and Party to Exemptions—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
4453-P	DOT-E 4453	Belmont Mine Supply Co., Inc., Flushing, OH.	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4453-P	DOT-E 4453	Armstrong Explosives Co., Kittanning, PA	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4453-P	DOT-E 4453	Wampum Manufacturing Co., Senecaville, OH.	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4453-P	DOT-E 4453	Wampum Distributing Co., New Galilee, PA.	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4631-X	DOT-E 4631	Nitrochem Energy, Corporation, Biwabik, MN.	49 CFR 173.114a, 173.304(a)	To authorize use of non-DOT specification hopper-type tank trucks and cargo tank trailers, for shipment of a blasting agent and a nonflammable compressed gas. (Mode 1.)
5403-X	DOT-E 5403	Halliburton Industrial, Services, Inc., Duncan, OK.	49 CFR 173.245(a)(31), 173.248(a)(6), 173.249(a)(6), 173.263(a)(10), 173.264(a)(14), 173.268(b)((3), 173.272(i)(21), 173.289(a)(4), 178.343-2(b), 178.343-5(b)(1)(i), 178.343-5(b)(2)(i).	To authorize use of a non-DOT specification cargo tank meeting the requirements of DOT Specification MC-312 with certain exceptions, in support of oil well acidizing and industrial cleaning operations. (Modes 1, 3.)
5403-X	DOT-E 5403	Halliburton Services, Duncan, OK	49 CFR 173.245(a)(31), 173.248(a)(6), 173.249(a)(6), 173.263(a)(10), 173.264(a)(14), 173.268(b)((3), 173.272(i)(21), 173.289(a)(4), 178.343-2(b), 178.343-5(b)(1)(i), 178.343-5(b)(2)(i).	To authorize use of a non-DOT specification cargo tank meeting the requirements of DOT Specification MC-312 with certain exceptions, in support of oil well acidizing and industrial cleaning operations. (Modes 1, 3.)
5820-X	DOT-E 5820	ICI Americas, Incorporated, Wilmington, DE.	49 CFR 173.315(a)	To authorize shipment of nonflammable gases in non-DOT specification IMCO Type 5 portable tanks. (Modes 1, 2, 3.)
5951-P	DOT-E 5951	Hill Brothers Chemical Co., Tucson, AZ	49 CFR 173.314(c)	To become a party to Exemption 5951. (Modes 1, 2.)
6126-P	DOT-E 6126	D & O Chemicals, Inc., Fort Lee, NJ	49 CFR 173.253(a)	To become a party to Exemption 6126. (Modes 1, 3.)
6126-P	DOT-E 6126	Aceto Chemical Co., Inc., Flushing, NY	49 CFR 173.253(a)	To become a party to Exemption 6126. (Modes 1, 3.)
6296-X	DOT-E 6296	American Cyanamid Co., Wayne, NJ	49 CFR 173.377(g)	To authorize additional bag packagings, for transportation of certain Class B poisons in DOT Specification 44D multi-wall paper bags. (Modes 1, 2.)
6325-P	DOT-E 6325	Belmont Mine Supply Co., Inc., Flushing, NY.	49 CFR 173.154(a)	To become a party to Exemption 6325. (Mode 1.)
6325-P	DOT-E 6325	Northern Ohio Explosives, Inc., Forest, OH.	49 CFR 173.154(a)	To become a party to Exemption 6325. (Mode 1.)
6325-P	DOT-E 6325	Wampum Supplies Co., New Galilee, PA	49 CFR 173.154(a)	To become a party to Exemption 6325. (Mode 1.)
6325-P	DOT-E 6325	Wampum Manufacturing Co., Senecaville, OH.	49 CFR 173.154(a)	To become a party to Exemption 6325. (Mode 1.)
6325-P	DOT-E 6325	Wampum Distributing Co., New Galilee, PA.	49 CFR 173.154(a)	To become a party to Exemption 6325. (Mode 1.)
6325-P	DOT-E 6325	Armstrong Explosives Co., Kittanning, PA	49 CFR 173.154(a)	To become a party to Exemption 6325. (Mode 1.)
6556-X	DOT-E 6556	Castle & Cooke, Inc., San Francisco, CA	49 CFR 173.132	To authorize use of a non-DOT specification single compartment portable tank, for transportation of a flammable liquid. (Modes 1, 3.)
6614-P	DOT-E 6614	Abcana Chemical Co., El Cajon, CA	49 CFR 173.263(a)(28), 173.277(a)(6)	To become a party to Exemption 6614. (Mode 1.)
6614-P	DOT-E 6614	Keith's Pool Service, Inc., Covina, CA	49 CFR 173.263(a)(28), 173.277(a)(6)	To become a party to Exemption 6614. (Mode 1.)
6762-X	DOT-E 6762	Taylor Chemicals, Inc., Sparks, MD	49 CFR 173.286(b)(2), 175.3	Request modification to packaging dimension of overpack for chemical kits. (Modes 1, 2, 3, 4.)
6874-X	DOT-E 6874	Degussa Corporation, Teterboro, NJ	49 CFR 172.101, 173.370(a)(13)	To authorize transport of sodium and potassium cyanides in non-DOT specification wooden boxes. (Modes 1, 2, 3.)
7024-X	DOT-E 7024	Avondale Mills, Sylacauga, AL	49 CFR 173.249(a)(7)	To authorize transport to an alkaline corrosive liquid in non-DOT specification collapsible rubber containers identified as sealdtanks. (Mode 1.)
7041-X	DOT-E 7041	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.134(a)(6)	To authorize shipment of pyrophoric waste materials in non-DOT specification cargo tank of the MC-331 type. (Mode 1.)
7046-X	DOT-E 7046	J.T. Baker Chemical Co., Phillipsburg, NJ	49 CFR 173.269, 178.340-5(c)	To authorize use of modified DOT Specification MC-312 glass lined cargo tanks, for transportation of cetain corrosive liquids and a certain oxidizer. (Modes 1, 3.)
7206-X	DOT-E 7206	Ruan Transport Corporation, Des Moines, IA.	49 CFR 173.245(a)	To authorize shipment of certain corrosive materials in non-DOT specification stainless steel cargo tanks. (Mode 1.)
7227-X	DOT-E 7227	Richmond Lox Equipment Company, Livermore, CA.	49 CFR 172.101, 173.315	To authorize manufacture, marking and sale of vacuum insulated non-DOT specification portable tanks, for transportation of liquid nitrogen. (Mode 3.)
7235-X	DOT-E 7235	Luxfer U.S.A., Ltd., Riverside, CA	49 CFR 173.302(a)(1). 173.304(a), 173.304(d), 175.3.	To authorize use of shrink fit neck rings on new hoop wrapped composite cylinders of 4500 psi design service pressure and to retrofit existing cylinders which were derated to 4000 psi. (Modes 1, 2, 3, 4, 5.)
7259-X	DOT-E 7259	Stauffer Chemical Company, Waetport, CT.	49 CFR 176.76(g)(5)	To authorize use of DOT Specification 56 aluminum portable tanks, for shipment of phosphorous pentasulfide by water. (Mode 3.)
7259-X	DOT-E 7259	FMC Corporation, Philadelphia, PA	49 CFR 176.76(g)(5)	To authorize use of DOT Specification 56 aluminum portable tanks, for shipment of phosphorous pentasulfide by water. (Mode 3.)
7259-X	DOT-E 7259	Exxon Chemical Americas, Houston, TX	49 CFR 176.76(g)(5)	To authorize use of DOT Specification 56 aluminum portable tanks, for shipment of phosphorous pentasulfide by water. (Mode 3.)
7259-X	DOT-E 7259	Occidental Chemical Corp., Niagara Falls, NY.	49 CFR 176.76(g)(5)	To authorize use of DOT Specification 56 aluminum portable tanks, for shipment of phosphorous pentasulfide by water. (Mode 3.)
7268-X	DOT-E 7268	Union Carbide Corporation, Banbury, CT	49 CFR 173.304(a)(1)	To authorize use of a DOT Specification 39 nonrefillable cylinder, for shipment of a nonflammable compressed gas. (Modes 1, 2, 3.)
7517-X	DOT-E 7517	Trinity Industries, Inc., Dallas, TX	49 CFR 173.314(c)	To authorize manufacture, marking and sale of non-DOT specification fusion welded tank car tanks, for transportation of nonflammable compressed gasses. (Modes 1, 2, 3.)
7574-X	DOT-E 7574	Remmers-Tomkins Flight Service, Inc., Burlington, IA.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize transport of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
7648-X	DOT-E 7648	Sunwest Aviation, Roy, UT	49 CFR 172.204(c), 172.300(a), 172.400(a), 173.91(a), 173.91(j), 175.3, 175.35(a).	To renew and to increase number of cases containing flares from five to six per trip. (Mode 4.)
7840-X	DOT-E 7840	Weber Aircraft, Burbank, CA	49 CFR 173.87, 175.3, 176.83	To authorize transport of a Class C explosive and a nonflammable compressed gas, in the same non-DOT specification fiberboard shipping container. (Modes 1, 2, 3, 4, 5.)
8003-X	DOT-E 8003	Pennwalt Corporation, Buffalo, NY	49 CFR 173.154(a)(14)	To authorize use of one-gallon, open-head polyethylene containers inside a DOT Specification 12B box, for transportation of organic peroxides. (Modes 1, 3.)

Renewal and Party to Exemptions—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8051-X	DOT-E 8051	Mauser-Werke GmbH, Brul, West Germany.	49 CFR 173.262, 173.266	To authorize not over 60% hydrogen peroxide solution in water, classed as an oxidizer, as an additional commodity. (Modes 1, 2, 3.)
8051-X	DOT-E 8051	Mauser Packaging, Ltd., New York, NY	49 CFR 173.262, 173.266	To authorize manufacture, marking and sale of DOT Specification 34 reusable, blowmolded, polyethylene container, for transportation of corrosive liquids and oxidizer. (Modes 1, 2, 3.)
8094-X	DOT-E 8094	Milport Chemical Company, Milwaukee, WI.	49 CFR 173.245, 173.249, 173.263, 173.268, 173.272.	To authorize shipment of corrosive materials in a DOT Specification 56 tank where a DOT Specification 60 tank is permitted in the regulations. (Mode 1.)
8129-P	DOT-E 8129	Coast Well Service, Emporium, PA	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	Philips Roxane, Inc., Saint Joseph, MO	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	U.S. Environmental Protection Agency, Washington, DC.	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	Carbolabs, Inc., Bethany, CT	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	University at Buffalo, Buffalo, NY	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8129-P	DOT-E 8129	GTE Network Systems Incorporated, Albuquerque, NM.	49 CFR 177.834(k), Part 173, Subparts D, E, F, H, Subparts K, L, M, O.	To become a party to Exemption 8129. (Mode 1.)
8353-X	DOT-E 8353	Morton Thiokol, Inc., Huntsville, AL	49 CFR 178.252-2(b)	To authorize an alternate closure device in a DOT Specifiction 56 portable tank, for transportation of ammonium perchlorate. (Mode 2.)
8378-X	DOT-E 8378	Cooper Biomedical, Inc., Malvern, PA	49 CFR 173.268, 175.3	To authorize use of DOT Specification 12B fiberboard boxes with inside DOT Specification 2E polyethylene bottles, for transportation of a dilute solution of nitric acid. (Modes 1, 2, 4.)
8431-P	DOT-E 8431	American Hoechst Corporation, Somerville, NJ.	49 CFR 173.294(a)(2), 179.202-16	To become a party to Exemption 8431. (Mode 2.)
8431-X	DOT-E 8431	Dow Chemical Co., Midland, MI	49 CFR 173.294(a)(2), 179.202-16	To authorize shipment of monochloroacetic acid solution in DOT Specification 111A100W6 insulated tank cars. (Mode 2.)
8445-P	DOT-E 8445	GTE Network Systems Incorporated, Albuquerque, NM.	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	Ashland Chemical, Dublin, OH	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	U.S. Environmental Protection Agency, Washington, DC.	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445. (Mode 1.)
8445-P	DOT-E 8445	Borg-Warner Chemicals, Inc., Parkersburg, WV.	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8845. (Mode 1.)
8451-X	DOT-E 8451	U.S. Department of Energy, Washington, DC.	49 CFR 173.65, 173.86(e), 175.3	To authorize shipment of not more than 25 grams of certain Class C explosives, and pyrotechnics in 4 or 6 inch diameter pipes overpacked in cushioned DOT Specification 12H box, strong wooden box, or metal drum. (Modes 1, 2, 4.)
8451-X	DOT-E 8451	Unidynamics-Phoenix, Inc., Phoenix, AZ	49 CFR 173.65, 173.86(e), 175.3	To authorize shipment of not more than 25 grams of certain Class C explosives, and pyrotechnics in 4 or 6 inch diamerter pipes overpacked in cushioned DOT Specification 12H box, strong wooden box, or metal drum. (Modes 1, 2, 4.)
8451-X	DOT-E 8451	U.S. Department of Defense, Washington DC.	49 CFR 173.65, 173.86(e), 175.3	To authorize shipment of not more than 25 grams of certain Class C explosives, and pyrotechnics in 4 or 6 inch diamerter pipes overpacked in cushioned DOT Specification 12H box, strong wooden box, or metal drum. (Modes 1, 2, 4.)
8451-X	DOT-E 8451	Ethyl Corporation, Baton Rouge, LA	49 CFR 173.65, 173.86(e), 175.3	To authorize shipment of not more than 25 grams of certain Class C explosives, and pyrotechnics in 4 or 6 inch diamerter pipes overpacked in cushioned DOT Specification 12H box, strong wooden box, or metal drum. (Modes 1, 2, 4.)
8478-X	DOT-E 8478	West-Mark, Ceres, CA	49 CFR 173.119(a), (m), 173.245(a), 177.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-307 or MC-312 with certain exceptions, for transportation of flammable and corrosive liquids. (Mode 1.)
8528-X	DOT-E 8528	Beech Aircraft Corporation, Boulder, Co	49 CFR 173.304(a)	To authorize use of DOT Specification 4L cylinders, for transportation of liquefied natural gases. (Mode 1.)
8538-X	DOT-E 8538	Hercules, Incorporated, Wilmington, DE	49 CFR 173.62, 178.177	To authorize transport of liquid high explosives in DOT Specification 15M containers in which the inner copper containers and the rubber boots have been replaced with polyethylene containers. (Mode 1.)
8545-X	DOT-E 8545	Hercules, Incorporated, Wilmington, DE	49 CFR 173.62	To authorize transport of limited quantities of liquid high explosives in polyethylene bottles packed in a DOT Specification 37A drum, overpacked in a DOT Specification 15A wooden box. (Mode 1.)
8547-X	DOT-E 8547	Natico, Inc., Chicago, IL	49 CFR 178.116, Part 173 Subpart F	To authorize use of an optional steel drum incorporating a 2U liner, for shipment of cleaning compounds containing not over 14 percent hydrofluoric acid. (Modes 1, 2.)
8698-X	DOT-E 8698	Union Carbide Corporation, Danbury, CT	49 CFR 173.320, 176.76	To add an additional portable tank, and to provide for a stainless steel inner container for the presently authorized 9% nickel steel portable tanks. (Mode 3.)
8787-X	DOT-E 8787	Motorola Semiconductor Sector, Phoenix, AZ.	49 CFR 173.119(a)(7), 173.249(a)(13), 173.272(g), 173.299(a)(1).	To authorize transport of certain flammable and corosive liquids in DOT Specification 2E polyethylene bottles, packed in a DOT Specification 12B fiberboard box. (Mode 1.)
8861-X	DOT-E 8861	Hoover Universal, Inc., Beatrice, NE	49 CFR 173.119(m), 173.346, 173.349, 173.352.	To authorize manufacture, marking and sale of DOT Specification 57 portable tanks, for shipment of various flammable liquids which are also corrosive or poison and certain Class B poison liquids. (Modes 1, 2.)
8879-X	DOT-E 8879	Temco Engineering, Tulsa, OK	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3.	To authorize components of cylinder to be made of type 301, 302, 303 and 316 stainless steel in addition to 304 and to increase length of cylinder from 24 inches to not over 29 inches. (Modes 1, 4.)
8879-X	DOT-E 8879	Temco Engineering, Tulsa, OK	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3.	To authorize manufacture, marking and sale of non-DOT specification stainless steel cylinders, for transportation of compressed gases. (Modes 1, 4.)
8908-X	DOT-E 8908	Diamond Shamrock Corporation, Irving, TX.	49 CFR 173.164	To authorize shipment of dry chromic acid, in non-DOT specification collapsible polyethylene-lined, woven polypropylene bags. (Mode 1.)

Renewal and Party to Exemptions—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8911-X	DOT-E 8911	Olin Corp., East Alton, IL	49 CFR 173.101	To authorize shipment of scrap, guillotined small arms ammunition loosely packed in non-DOT specification, nonreusable, closed-top wooden crates or fiberboard boxes, in truck load lots to an incinerator for disposal. (Mode 1.)
8920-X	DOT-E 8920	Applied Environments Corporation, Woodland Hills, CA.	49 CFR 173.302(a)(4), 175.3	To authorize manufacture, marking and sale of non-DOT specification welded high pressure nonrefillable cylinders, for transportation of nonflammable, liquefied gases. (Modes 1, 2, 4.)
8921-X	DOT-E 8921	Hoover Universal, Inc., Beatrice, NE	49 CFR 173.119, 173.125, 173.266, Part 173, Subpart F.	To authorize manufacture, marking and sale of nonreusable non-DOT specification steel jacketed polyethylene portable tanks, for transportation of corrosive liquids or an oxidizer. (Modes 1, 2, 3.)
8938-X	DOT-E 8938	Cryogenic Services Inc., Canton, GA	49 CFR 173.304(a), 175.3	To authorize two new models of cylinders identical to those authorized except for volume and material thickness, for shipment of carbon dioxide, liquefied and nitrous oxide. (Modes 1, 2, 3, 4.)
9144-X	DOT-E 9144	Cajun Bag & Supply Company, Crowley, LA.	49 CFR 173.154, 173.164, 173.182, 173.234, 173.245b.	To authorize chromic acid, classed as an oxidizer as an additional commodity, and to authorize option to use 3 mil or 8 mil polyethylene film to line bags. (Modes 1, 2.)
9157-P	DOT-E 9157	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.314(c), 179.300-7	To become a party to Exemption 9157. (Mode 1.)
9184-P	DOT-E 9184	Midwest Carbide Corporation, Keokuk, IA	49 CFR 173.178	To become a party to Exemption 9184. (Modes 1, 2.)
9229-P	DOT-E 9229	Capilano Plastics Co., Ltd., Westminster, BC.	49 CFR 178.19, Part 173, Subpart D, F	To become a party to Exemption 9229. (Modes 1, 2, 3.)
9266-P	DOT-E 9266	Societe Auxilizire de Transports et d'Industries, Paris, France.	49 CFR 173.315, 178.245	To become a party to Exemption 9266. (Modes 1, 2, 3.)
9266-P	DOT-E 9266	Eurotainer S.A.R.L., Paris, France	49 CFR 173.315, 178.245	To become a party to Exemption 9266. (Modes 1, 2, 3.)

New Exemptions

Application	Exemption	Applicatn	Regulation(s) affected	Nature of exemption thereof
7060-N	DOT-E 9302	Las Vegas Airlines, Incorporated, Las Vegas, NV.	49 CFR 175.701(a)	To authorize air transport of radioactive material without transport index and spearation distance controls provided operations are in accordance with safety instructions provided by DOE or DOE contractor radiological safety personnel. (Mode 4).
9182-N	DOT-E 9182	Stoneco, Inc., Dacono, CO	49 CFR 172.101, 173.53, 175.30	To authorize transport of explosive pest repellant devices, in plastic boxes packed in DOT Specification 12B fiberboard boxes. (Modes 1, 4.)
9193-N	DOT-E 9193	Schlumberger Well & Schlumberger Offshore Services, Houston, TX.	49 CFR Parts 100-199	To authorize shipment of a downhole logging tool (snode) that contains an accelerator hosing, one section of which is charged with sulfur hexafluoride to a pressure of 80 psig. (Modes 1, 2, 3, 4, 5.)
9197-N	DOT-E 79197	Greif Bros. Corp., Springfield, NJ.	49 CFR 173.119(a)	To authorize manufacture, marking and sale of DOT Specification 34 drums, for transportation of certain flammable liquids. (Modes 1, 2, 3.)
9210-N	DOT-E 9210	L.A. Paper & Packaging, Libertyville, IL.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize shipment of hazardous materials, which are required to bear the POISON label, to be transported without the label when packaged, in tightly closed glass, plastic or metal containers not exceeding one quart capacity and sealed with tape or equivalent material. (Modes 1, 2, 4.)
9213-N	DOT-E 9213	Bulk-Pack, Inc., West Monroe, LA.	49 CFR 173.182, 173.217, 173.245b	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2000 pounds each, and top and botton outlets, for shipment of corrosive solids and nitrates. (Modes 1, 2, 3.)
9221-N	DOT-E 9221	Applied Environments Corporation, Woodland Hills, CA.	49 CFR 173.302(a)(4), 175.3, 178.44	To authorize manufacture, marking and sale of non-DOT specification girth welded stainless steel cylinders, for shipment of nonflammable gases. (Modes 1, 2, 4.)
9225-N	DOT-E 9225	Geosource Inc., Corpus Christi, TX.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers, for Transportation of hydrocarbon products, classes as flammable liquids or flammable gases. (Mode 1.)
9226-N	DOT-E 9226	Stauffer Chemical Co., Westport, CT.	49 CFR 173.121	To authorize use of DOT Specification 51 portable tanks, for shipment of a flammable liquid. (Modes 2, 3.)
9241-N	DOT-E 9241	Stoneco, Inc., Dacono, CO	49 CFR 172.101, 175.30	To authorize transport of explosives pest repellent devices, in fiberboard boxes packed in DOT Specification 12B fiberboard boxes. (Modes 1, 3, 4.)
9244-N	DOT-E 9244	Stoneco, Inc., Dacono, CO	49 CFR 172.101, 175.30	To authorize transport of explosive pest repellant devices, in fiberboard boxes packed in DOT Specification 12B fiberboard boxes. (Modes 1, 3, 4.)
9262-N	DOT-E 9262	Pengo Industries, Inc., Fort Worth, TX.	49 CFR 173.100(v), 175.30	To authorize transport of oil well cartridges containing not more than 500 grains of high explosive. (Modes 1, 3, 4.)
9266	DOT-E 9266	ANF-Industries, Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of liquefied compressed gases. (Modes 1, 2, 3.)
9278-N	DOT-E 9278	DSI Transports, Inc., Houston, TX.	49 CFR 173.164	To authorize transport of solid chromic acid, in DOT Specification stainless steel MC-307 cargo tanks. (Mode 1.)
9279-N	DOT-E 9279	Keystone Steel & Wire Co., Peoria, IL.	49 CFR 173.154	To authorize transport of a flammable solid which is water reactive in open-top frieght containers and open top trailers covered with tarpaulins. (Mode 1.)
9281-N	DOT-E 9281	Global High Energy Systems, Inc., Grand Prairie, TX.	49 CFR 172.101, 173.100	To authorize transport of cylindrical pellets of desensitized RDX, in DOT Specification 12B65 fiberboard boxes. (Modes 1, 2, 3, 4.)
9291-N	DOT-E 9291	Procor Limited, Oakville, Ontario, Canada.	49 CFR 179.102-2(a)(3)	To authorize use of a DOT Specification 105A500W tank car tank with a modified insulation system, for transportation of chlorine, a nonflammable gas. (Mode 2.)

Emergency Exemptions

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 8621-P	DOT-E 8621	Atlantic & Gulf Stevedores of Alabama, Mobile, AL.	49 CFR 176.415 (c)(2)	To become a party to Exemption 8621. (Mode 3.)
EE 8873-X	DOT-E 8873	Stauffer Chemical Company, Westport, CT.	49 CFR 173.121	To authorize use of DOT Specification MC-312 cargo tanks, for transportation of carbon disulfide or carbon bisulfide. (Mode 1.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9307-N	DOT-E 9307	Better Methods, Inc., Secaucus, NJ	49 CFR 173.119(b)(4)	To authorize shipments of methyl alcohol in inside metal containers of two-gallon capacity, overpacked three to a DOT Specification 12B fiberboard box. (Mode 1.)
EE 9328-N	DOT-E 9328	Petersburg Oil Co., Inc., Petersburg, WV	49 CFR 173.119, 177.814	To authorize use of non-DOT specification cargo tank motor vehicles, for transportation of a flammable liquid. (Mode 1.)
EE 9329-N	DOT-E 9329	MarkAir, Inc., Anchorage, AK	49 CFR 172.101, column 6, 173.110, 173.60, 175.30.	To authorize transport of charged well casing jet perforating guns, classed as explosive A or explosive C. (Mode 4.)
EE 9330-N	DOT-E 9330	MarkAir, Inc., Anchorage, AK	49 CFR 172.101 column 6, 173.315, 175.30.	To authorize use of non-DOT specification portable tank of 1,000 to 2,000 gallon capacity, for transportation of nitrogen refrigerated liquid. (Mode 4.)
EE 9333-N	DOT-E 9333	Monsanto Company, St. Louis, MO	49 CFR 173.3(c)	To authorize shipment of one steel cylinder with a leaky valve, for transportation of a corrosive material. (Mode 1.)

WITHDRAWALS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8805-X	Union Carbide Corporation, Danbury, CT	49 CFR 173.315, 176.76(b)	To authorize use of non-DOT specification vacuum insulated cargo tanks, for transportation of certain nonflammable gases. (modes 1, 2.)

Denials

8365-P Request by Allied Cleaning Specialists, Inc., Los Angeles, CA to authorize the use of a modified DOT Specification MC-312 or MC-307 cargo tank for the transportation of certain flammable and corrosive liquids denied October 17, 1984.

9160-N Request by Carus Chemical Company, LaSalle, IL to authorize carriage on board passenger carrying aircraft monitors which contain a small amount of sulfuric acid solution denied October 9, 1984.

9228-N Request by Southern California Chemical Co., Inc., Santa Fe Springs, CA to authorize transport of solutions of aqua ammonia, copper sulfate, cupric chloride, ferric chloride and hydrochloric acid, in non-DOT specification cargo tanks denied October 3, 1984.

9255-N Request by Stauffer Chemical Company, Westport, CT to authorize use of a trade name on shipping papers in place of the specific constituent which identifies a hazardous substance in a mixture denied October 25, 1984.

9297-N Request by Colonial Oil Industries, Inc., Savannah, GA to authorize use of coded shipping papers in lieu of complying with the requirements of 49 CFR 172.201(a)(3) denied October 19, 1984.

Issued in Washington, DC, on November 6, 1984.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84-30018 Filed 11-14-84; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Dept. Circ. Public Debt Series—No. 34-84]

Treasury Notes; Series C-1994

November 8, 1984.

The Secretary announced on November 7, 1984, that the interest rate on the notes designated Series C-1994, described in Department Circular—Public Debt Series—No. 34-84 dated November 1, 1984, will be 11⅝ percent. Interest on the notes will be payable at the rate of 11⅝ percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 84-29864 Filed 11-14-84; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

Application for Recordation of Trade Name: "The Union Fork and Hoe Company"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "THE UNION FORK AND HOE COMPANY," used by the Union Fork and Hoe Company, a corporation organized under the laws of the State of Ohio, located at 500 Dublin Avenue, Columbus, Ohio 43216. The application states that the trade name is used in connection with hand-operated, farm, garden and lawn tools manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before January 14, 1985.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: November 9, 1984.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 84-29935 Filed 11-14-84; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 84-230]

Reimbursable Services—Excess Cost of Preclearance Operations

November 8, 1984.

Notice is hereby given that pursuant to section 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning November 11, 1984.

Installation	Biweekly excess cost
Montreal, Canada	$18,967
Toronto, Canada	21,308
Kindley Field, Bermuda	14,665
Nassau, Bahama Islands	23,523
Vancouver, Canada	15,274
Winnipeg, Canada	3,327
Freeport, Bahama Islands	14,272
Calgary, Canada	9,606
Edmonton, Canada	7,670

D. Lynn Gordon,

Acting Comptroller.

[FR Doc. 84-29936 Filed 11-14-84; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATON

Advisory Committee on Health-Related Effects of Herbicides; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92-463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC on December 11, 1984, at 8:30 a.m. The purpose of the meeting will be to assemble and analyze information concerning toxicological issues for which the Veterans Administration needs to formulate appropriate medical policy and procedures in the interest of veterans who may have encountered herbicidal chemicals used during the Vietnam Conflict.

The meeting will be open to the public up to the seating capacity of the room. Members of the public may direct questions, in writing only, to the Chairman, Barclay M. Shepard, M.D., and submit prepared statements for review by the Committee. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Transcripts of the proceedings and rosters of the Committee members may be obtained from Mr. Donald Rosenblum, Agent Orange Projects Office (10A7), Department of Medicine and Surgery, Veterans Adminstration Central Office, Washington, DC 20420. (Telephone: (202) 376-7528).

Dated: November 7, 1984.
By direction of the Administration.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84-29985 Filed 11-14-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 222
Thursday, November 15, 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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	Items
Consumer Product Safety Commission	1, 2
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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, November 15, 1984, 3:00 p.m.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Regional Directors Meeting

The Commission and the Regional Directors will discuss various matters.

For a recorded message containing the latest agenda information, call: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 301—492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84–30016 Filed 11–9–84; 5:01 pm]

BILLING CODE 6355–01–M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, November 15, 1984, 9:30 a.m.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

1. Compliance Status Report
The staff will brief the Commission on a Compliance Status Report.
2. Enforcement Matter OS #3896
The Commission will consider Enforcement Matter OS #3896.
3. Enforcement Matter OS #3109
The Commission will consider Enforcement Matter OS #3109.

For a recorded message containing the latest agenda information call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84–30017 Filed 11–9–84; 5:01 pm]

BILLING CODE 6355–01–M

3

FEDERAL ELECTION COMMISSION

FEDERAL REGISTER No. 84–29656.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, November 15, 1984, 10:00 a.m.

The following items have been added to the agenda:

1. Draft Advisory Opinion #1954–52, Marty Russo, Member of Congress
2. Petition for rulemaking filed by the National Council of Farmer Cooperatives—11 CFR 114.1(e)

The following item previously sunshined should be corrected to read:

Draft Advisory Opinion #1984–33, Thomas F. Kelley, III, on behalf of National Restaurant Association PAC

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–523–4065

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84–30146 Filed 11–13–84; 3:18 pm]

BILLING CODE 6715–01–M

4

RAILROAD RETIREMENT BOARD

Notice of Public Meeting.

Notice is hereby given the Railroad Retirement Board will hold a meeting on November, 21, 1984, 10:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago Illinois 60611. The agenda for this meeting follows:

(1) Bureau of Unemployment and Sickness Insurance (BUSI) Action Plan
(2) Proposed Disability Regulations (Part 220)
(3) Amendment of §§ 260.9(c) and 320.39 of the Board's Regulations
(4) Proposed Regulation for Lump-Sum Payments
(5) Proposed Changes in the RUIA Regulations (U&SI Quality Assurance and Program Integrity—Proposal for 14-Day Registration)
(6) Emons Industries Appeal
(7) Relinquishment of Rights in Cases Where a Discharge is Claimed to Have Been Wrongful

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 387–4920.

Dated: November 9, 1984.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 84–30121 Filed 11–13–84; 12:54 pm]

BILLING CODE 7905–01–M

5

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, November 1, 1984.

CHANGE IN THE MEETING: Additional items.

The following items were considered at a closed meeting held on Tuesday, November 6, 1984, at 10:00 a.m.

Institution of injunctive action.
Settlement of injunctive actions.
Report of investigation.

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: William Fowler at (202) 272–3077.

Shirley E. Hollis,

Acting Secretary.

November 8, 1984.

[FR Doc. 84–30128 Filed 11–13–84; 12:54 pm]

BILLING CODE 8010–01–M

federal register

Thursday
November 15, 1984

Part II

Environmental Protection Agency

40 CFR Parts 124, 144, 146 and 147
Underground Injection Control Program: Federally-Administered Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124, 144, 146 and 147

[FRL-2687-2]

Underground Injection Control Program: Federally-Administered Programs

AGENCY: The Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Safe Drinking Water Act (SDWA) establishes the Underground Injection Control (UIC) program, which is designed to prevent underground injection through wells that may endanger drinking water sources.

The SDWA provides for States to apply for and receive approval from EPA to administer their own UIC programs, if they meet EPA's minimum requirements. If a State has not submitted an application or if the State program has been either disapproved or no longer meets the requirements of the Act, the SDWA requires EPA to prescribe a Federally-administered UIC program for the State. SDWA Sections 1422, 1425. On May 11, 1984, 49 *FR* 20138, *et seq.*, EPA published a final rule establishing EPA-administered programs in 22 jurisdictions; on the same day, the Agency proposed regulations establishing EPA-administered UIC programs in 13 additional States (including most Indian lands in these States). 49 FR 20238. In addition, the Agency proposed four programs for Indian lands in other jurisdictions.

Since the proposal, the Agency has granted primary enforcement authority to the States of Oregon, Washington, Rhode Island, Vermont, South Carolina, North Dakota, and for oil and gas related injections in South Dakota. Accordingly, EPA is not promulgating the programs proposed for these States. In the programs promulgated today, EPA will implement a program covering all classes of wells for some States; in others where an approved State program covers some classes of wells, the Federal program will cover only the remaining classes. The program promulgated today covers all States for which there is neither an approved State-administered program nor a promulgated EPA-administered program (see Table 1).

DATE: These regulations shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on November 29, 1984. These regulations shall become effective on December 30, 1984. In order to assist the EPA to correct typographical errors, comments of a non-substantive nature on the final regulations may be submitted until [December 17, 1984]. The effective date will not be delayed by consideration of such comments.

ADDRESS: Comments of a technical and non-substantive nature should be addressed to Judy A. Long, Comment Clerk, Ground Water Protection Branch, EPA, Office of Drinking Water (WH-550), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John B. Atcheson, Ground Water Protection Branch, EPA (202) 382-5530.

SUPPLEMENTARY INFORMATION:

Table 1—Jurisdictions for Which the Programs Are Promulgated

(The promulgated program covers all classes of wells unless otherwise noted)

The UIC Program

Florida (Class II only)
Hawaii
Kansas (Indian lands only)
Minnesota (Indian lands only)
Mississippi (Class II only)
Ohio (Class I, III, IV and V only)
Puerto Rico
South Dakota (Classes I, III, IV and V wells, and Class II wells on Indian lands)
Virgin Islands
Wisconsin (Indian lands only)
Osage Mineral Reserve, Oklahoma (Class II only)

Since the May 11, 1984, proposal, the Agency has approved applications for primacy from several of the States for which EPA, at that time, was proposing UIC programs. These recently approved programs are: North Dakota (Classes I, III, IV and V) Oregon (all classes of wells), Rhode Island (all classes of wells), Vermont (all classes of wells) and Washington (all classes of wells).

These approvals eliminate the need to promulgate EPA-administered programs for these classes of well in these States. Accordingly, EPA is not including them in this rulemaking.

I. Background

These regulations are being promulgated under the authority of Part C of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f to 300j-9) and, to the extent that they deal with hazardous waste, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901-6987.). The SDWA is designed to protect the quality of drinking water in the United States, and Part C of the SDWA specifically mandates regulation of underground injection of fluids through wells. A summary of the relevant sections of Part C was provided in earlier rulemakings (see 48 FR 40099, September 2, 1983). A detailed discussion of the relevant statutory provisions and regulatory development appeared in the first proposal of Federally-administered programs.

To briefly summarize what was explained in that proposal, EPA has promulgated minimum requirements for State UIC programs, as directed by the SDWA, in 40 CFR Parts 124, 144, 145 and 146. The SDWA provides for States, territories, and possessions (referred to below as "States") to apply to EPA for primary enforcement authority to administer the UIC program in their States, and for EPA to approve such programs if they meet the minimum requirements (SDWA Section 1422) or, for Class II (oil-and-gas related) wells, if they meet certain more flexible minimum statutory requirements (SDWA Section 1425).

If a State fails to submit a program application, if its application is denied, or if an approved program is changed such that it no longer meets the requirements of the SDWA and the applicable minimum requirements, the SDWA requires EPA to promulgate an EPA-administered program for the State (Section 1422(c)). In cases where a State has an approved State-administered program for only some classes of wells, EPA must administer the program for the remaining classes. In addition, where a State with an approved State-administered program has chosen not to assert authority over Indian lands in the State, or has failed to make an adequate demonstration of such authority, EPA will promulgate an EPA-administered program for such Indian lands.

In July 1983, the National Wildlife Federation filed suit challenging EPA's failure to have promulgated State UIC programs for States without approved UIC programs. The agency and the plaintiffs agreed in a Consent Decree, which was court approved, to promulgate (i.e., have signed by the Administrator) these programs by October 29, 1984. *National Wildlife Federation* v. *Ruckelshaus*, C.A. No. 83-JM-1333 (D. Colo, Dec. 22, 1983). These rules (the second package of "Direct Implementation" rules for States without approved UIC programs), therefore, are promulgated in response to the Court's ordered deadline.

On May 11, 1984, 49 *FR* 20138 *et seq.*, EPA promulgated EPA-administered programs for 22 states. In today's rulemaking action EPA is promulgating programs for seven additional States, which consist of all States for which there is neither an approved State-administered program nor a promulgated EPA-administered program.

In some cases, the promulgated programs cover only some classes of wells, because an approved State-administered program covers one or more other classes. EPA is also promulgating three EPA-administered programs on Indian Lands that lie within States with approved State-administered programs and one other Indian Lands program within a State which has an EPA-administered UIC program.

II. Structure of Direct Implementation

A. Contents of the Federally-administered programs

For the reasons outlined in an earlier proposal (48 *FR* 40100, September 2, 1983) the Agency has adopted the following scheme for regulations pertaining to Federally-prescribed State programs:

(1) Requirements, necessary to supplement or clarify all the EPA-administered programs, were promulgated as amendments to Part 144 in 49 *FR* 20138 *et seq.* (May 11, 1984);

(2) A subpart for each State program is contained in Part 147. In the cases where EPA administers the program each subpart: (a) makes applicable in each program the UIC minimum requirements of 40 CFR Parts 124, 144 and 146; and (b) prescribes additional State-specific requirements.

For State-administered programs, each subpart of Part 147 describes the approved program and incorporates by reference the appropriate requirements form State statutes and regulations. Such requirements are made a part of the UIC program under the SDWA. State procedural requirements, which are incorporated by reference as part of the applicable underground injection control program (*see also* 49 FR 20197–20220, May 11, 1984) and which differ from EPA procedural requirements, are not binding upon EPA. For example, a State's procedural requirements for enforcement which go beyond the procedural minimum requirements under the SDWA for enforcement will not be imposed by EPA in Federal enforcement actions.

B. Jurisdictions Covered

1. States

EPA is promulgating programs for every State which is not currently subject to an approved UIC program or a promulgated EPA-administered program. Several of the States included in this rulemaking have submitted applications for primary enforcement responsibility which the Agency is in the process of evaluating. It is possible that some of these programs may be approved, and therefore eventually administered by the States. Nevertheless, the Agency is promulgating programs in this rulemaking for all States.

The Agency is taking this action for two reasons. First, the SDWA mandates that EPA implement a program in States where no State-administered programs has been approved, and it specifies a deadline for this action. Second, the Agency was sued for failure to meet this deadline and has entered into a Consent Decree which dictates that EPA develop and implement programs in States which do not have programs by the Fall of 1984. To be assured of meeting the requirements of both the SDWA and the Consent Decree, EPA is promulgating programs for all States not covered by a program as of the date of this rulemaking. If a State-administered program is subsequently approved after promulgation, EPA will withdraw the corresponding EPA-administered program.

2. Indian Lands

Indian lands affected by this rulemaking are of two types: Indian lands within States that are administered by EPA, and Indian lands within States with approved State-administered programs.

Indian lands in EPA-administered States. Some of the States in which EPA is implementing Federally-administered UIC programs contain Indian lands within their boundaries. As stated in the proposal, EPA intends, unless stated otherwise in the rule that the program in a given State apply to Indian lands in that State as well as to non-Indian lands. EPA especially invited Indians on affected Indian lands to submit comments on the appropriateness of the proposed program for those lands. In addition, EPA made a special effort to contact all affected tribal and other Indian organizations to solicit their comments. There was no new comment provided on the specific proposals made for Indian lands within States having EPA-administered programs. The Department of Interior (DOI), however, did comment in general on the administration of UIC programs on Indian lands. Their concerns centered on how the Agency intended to administer the programs, relative to existing regulatory requirements that DOI has on such lands. The EPA is answering the DOI comment in a separate forum, as we believe that DOI and EPA should work together to coordinate the administration of our separate programs, while fullfilling our distinct statutory mandates. A letter summarizing our response is a part of the Administrative record of this rulemaking.

The Agency is promulgating these programs as proposed, but will continue to work with the Indians and DOI as they are implemented.

Indian Lands within States with approved State-administered programs. In the September 2, 1983 proposal (48 *FR* 40100 *et seq.*) EPA presented four alternative approaches to promulgating UIC programs on Indian lands in States with approved State-administered programs: (1) Implement a program consisting of current UIC minimum requirements; (2) implement a program consisting of requirements patterned after State requirements from the approved program applicable in the rest of the State; (3) adopt a combination of the minimum UIC requirements regulations and the approved State program requirements; or (4) develop unique requirements in response to Indian concerns or other special circumstances. After reviewing comments, EPA published its intent to use any of the four proposed options appropriate to the individual case when implementing programs for Indian lands in primacy States (49 *FR* 20140, May 11, 1984, *et seq.*).

The great majority of commenters preferred Option 2 for Indian lands in the State in which they were located. Others wanted programs specifically adapted to tribal policies. In such cases, EPA will develop a program similar to the surrounding State's program or a program adapted to other tribal preferences. Because an EPA-administered program based on either approach necessitates a thorough analysis to assure that it is consistent with EPA's authorities under the SDWA, it was not possible to develop many of these Indian lands programs. Therefore, EPA will not be promulgating such programs at this time. The Agency intends to do so at the earliest possible time.

For Indian lands in three such States, however, EPA has been able to develop programs, and these are included in today's promulgation. These programs cover Class II wells on the Osage Mineral Reserve in Oklahoma and all classes of wells on all Indian lands in the States of Kansas and Wisconsin. The Osage program has been designed according to a combination of Options (3) and (4), and consists of requirements drawn from the UIC minimum requirements regulations, the Oklahoma Corporation Commission regulations, the Bureau of Indian Affairs regulations, and unique requirements developed in response to Indian concerns. The

Kansas Indian lands program follows Option (1) and thus consists of the EPA minimum requirements regulations. The Wisconsin program follows Option (4), and consists of more stringent requirements in response to Indian preferences. Each of these programs is discussed in more detail in Part IV of this preamble.

Definition of Indian lands. In developing programs for Indian lands, it is necessary to specify as precisely as possible the particular lands intended to be covered by each program. To be ensured of comprehensive coverage, EPA intends in most cases to use a generic definition to identify those lands to be covered by Indian lands programs. The definition EPA intends to employ is that of "Indian country," defined by Federal statute at 18 U.S.C. § 1151.

EPA believes this definition is most consistent with the concept of Indian lands as the Agency has used it in regulations and UIC program approvals to date. The term accurately describes lands for which EPA will administer the UIC program in the absence of a specific demonstration of State authority based on a statute or treaty.

Therefore, EPA is adding this definition of "Indian lands" to § 144.3, which applies when that term is used in each Indian lands program in Part 147. The jurisdiction of each Indian lands program can be described simply by using the term Indian lands. This is done in each Indian lands program today with the exception of the program for the Osage Mineral Reserve, which is intended to apply only to that specifically identified reserve.

III. General Contents of EPA-administered Programs

Part 147, containing all specific State UIC programs, was established in EPA's first promulgation of EPA-administered programs. 49 *FR* 20197 (May 11, 1984). A separate subpart of Part 147 corresponds to each State. Today's action adds to Part 147 an EPA-administered program for each of the 7 States listed and for Indian lands in certain other States. For each of the State programs and one of the Indian lands programs, EPA is making directly applicable the minimum requirements in Parts 124, 144, and 146. In addition, where necessary, each program sets forth certain additional State-specific requirements. These include requirements which—due to geologic, historical or hydrologic conditions—differ from State to State and region to region. They also include regulations that state more specifically requirements that in the minimum standards are only general and afford a broad range of discretion to the Director.

For certain requirements the Agency is specifying numerical standards which are based on conditions present in a State or part of a State. To the extent that conditions vary from one State to another, these requirements will also vary. The SDWA provides for such variations in Section 1422(c) and 1421 (b)(3) which requires that Agency to consider the varying hydrologic, geologic, and historical conditions in a State and not to disrupt existing State programs unnecessarily. Indeed, it is for this reason that the Agency originally built flexibility into the UIC program. Thus, it is necessary to vary some of these more specific requirements from State to State.

For the most part it is such specific requirements, or mechanisms for establishing such standards, that EPA is applying in each EPA-administered program. Many of these standards pertain to wells authorized by rule, since the authorization by rule mechanism requires that specific requirements be imposed by regulations, rather than in permit conditions as can be done for wells authorized by permit. For programs in States with no existing wells, any new wells will be required to receive permits, and the state-specific requirements for wells authorized by rule are not necessary.

A discussion of permitting schedules, mechanical integrity testing schedules, and other administative considerations can be found in the program description for each of the State programs promulgated today. Program descriptions are available at the appropriate Regional Office.

IV. Response to Comments: General Program Elements

A. Aquifer Exemptions

In the first proposal (48 *FR* 40107–08 September 2, 1983) the Agency described in detail the criteria for exempting aquifers and the administrative mechanisms to be used in granting various kinds of exemptions. In the May 11, 1984 proposal (49 *FR* 20241) the Agency also solicited requests from operators who believed they were injecting into a USDW which qualified for exemption. These State specific issues are discussed in the preamble to the individual State programs.

The Agency received two comments on aquifer exemptions. One commenter expressed strong support for the Agency's administrative approach to aquifer exemptions, particularly the discretion afforded to Directors in EPA-implemented programs. The other commenter requested that a specific aquifer be exempted. That request is being evaluated and a determination will be made shortly.

B. Pressure Limitation

The current UIC minimum requirements obligate the Director to establish limits on injection pressure. For wells authorized by permit the Director may determine an appropriate pressure on a case-by-case basis. For wells authorized by rule, a general standard must be established.

In the proposal and in the promulgation of the Direct Implementation programs on May 11, 1984 (49 *FR* 20138 *et seq.*; 49 *FR* 20238 *et seq.*), the Agency outlined the approach it intended to use in specifying injection pressures for operators. In the case of Class I operators, Class II salt water disposal well operators, and Class III operators authorized by rule, the Agency proposed to set a conservative maximum statewide value. The owner/operator could inject at a pressure higher than the specified standard by applying for and receiving a permit and by demonstrating in the application that the higher pressure did not violate the existing performance standards in 40 CFR 146.13(a)(1); 146.23(a)(1); 146.33(a)(1), 144.28(f)(3) as applicable.

In the case of owners or operators of enhanced recovery or hydrocarbon storage wells, EPA proposed to require submission of formation-specific maximum injection pressure values on a field or project basis. The Agency would then establish appropriate limits for formations or units based on this and other data. The operator could receive authorization to inject at higher pressures merely by demonstrating to the satisfaction of the Director that such pressures would not fracture the confining zone. For more detailed discussion of the Agency's reasons for adopting this approach, *see* FR 20138 *et seq.* (May 11, 1984).

The Agency proposed (see § 147.2912(b) as proposed) a slightly different approach for Subpart GGG, the Osage reservation. The comments pertaining to this requirement and the Agency's response are discussed in detail in the preamble to the Osage program. The following discussion addresses comments on the proposed approaches for the remaining programs.

One commenter noted that injection pressures should be established on a case-by-case basis even where a general maximum value has been specified.

The Agency generally agrees, and would like to point out that operators of most classes of wells for which injection pressure limits are set will soon have to

be permitted. As noted in the preamble to the proposal, EPA will consider pressures higher than the general standard specified, when issuing permits. Thus, as these operators apply for and receive permits, injection pressure limits will be established on a permit-by-permit basis and should therefore reflect conditions present in a particular field or formation.

The Agency recognizes that applying the standards of 144.28(f)(3)(c) (A) and (B) to brine injection wells while they are authorized by rule is a conservative approach. This approach is merely an interim standard, and the Agency intends to apply the standards of § 144.28(f)(3)(ii) when setting pressure limits for brine disposal wells authorized by permit. The Agency believes it appropriate to be more conservative in specifying requirements for wells while they are authorized by rule since the statute and regulations are preventative. Thus, in order to fulfill this mandate EPA must assume the most protective values until data such as information submitted as part of a permit application, indicates otherwise.

The same commenter requested that EPA consider allowing Class I and III well operators to inject at pressures which might induce fracturing in the injection zone, so long as there are adequate safeguards against fracturing the confining zone, a standard the Agency applies to operators of Class II wells.

In response, the Agency would like to note several points. First, the existing rules already establish that operators of these classes of wells may inject at pressures which fracture the injection zone, but only during well stimulation. *See,* §§ 144.13(a), 144.33(a).

Second, the reasons for developing a different standard for Class II wells is clearly laid out in 49 *FR* 20152—20153, May 11, 1984. To summarize that discussion briefly, Class II wells inject fluids which usually are relatively less dangerous than those injected in Class I and III wells. In addition, the SDWA specifies that rules for Class II operations may not unnecessarily interfere with or impede the production of oil and gas, unless those requirements are necesary to assure that USDWs are not endangered, *See,* SDWA §§ 1421 (b)(2); 1422(c), a restriction not present for rules applicable to Class I and III wells. The Agency believes that the nature of injected fluids and the language of the statute justify different treatment for Class II operators.

Finally, the standard which the commenter questioned (i.e., the prohibition against fracturing the injection zone) was established in the June 24, 1980 promulgation of 40 CFR Part 146. *See,* 45 *FR* 42472. It is not a new requirement of this rulemaking and, while the Agency would be willing to consider any important technical data not available during the previous comment periods, EPA does not believe the comment raises new issues or includes new data that warrant a change in these longstanding rules at this time.

Another commenter suggested that particular sections specifying injection pressure limits for Class II wells be deleted from the regulations (e.g., §§ 147.504, 147.1254 and 147.2103). The same commenter, in supporting this request stated that he "* * * does not agree that arbitrarily set pressure limitations should be established for enhanced recovery wells." He noted further that enhanced recovery operators have an economic incentive to retain fluids in the injection zone and that propagation of fractures in the injection zone is in some cases desirable. The commentor further maintained that the requirement would prevent operators from fracturing the injection zone.

EPA has considered the comments carefully and has elected to retain the requirements as stated for several reasons. First, EPA will not, as asserted by the commenter, set pressure limits arbitrarily. For enhanced recovery wells the Agency will specify pressure limits on a field—or formation—specific basis and will make such determinations only after carefully reviewing available data, much of which will be supplied by the owner or operator. This approach will result in limits, which, far from being arbitrary, are site-specific and based upon sound technical data. Moreover, in establishing these limits, the Agency will go through the same public notice and comment requirements as those specified for permits in Subpart A of 40 CFR Part 124, that is, §§ 124.10, 124.11, 124.12, 124.13, and 124.14. Therefore, if the Agency's preliminary pressure limit does appear inappropriate, the owner or operator will have an opportunity to challenge EPA's specific determination in comments or at the hearing.

The Agency explained in the May 11, 1984, preamble to the first set of federally-administered UIC programs (49 FR at 20153):

* * * even after EPA has established field-specific injection pressure limitations, the agency will consider allowing higher pressures case-by-case with the approval of the Regional Administrator. An owner or operator desiring such a variance, must request and obtain the written approval of the Regional Administrator. If the owner or operator is dissatisfied with the Regional Administrator's response to his request to operate at higher pressure, he may then apply for a permit and challenge the permit if he fails to receive permit conditions that he believes are appropriate.

Again, these owner-or operator-specific variances will be subject to the public notice and comment provisions of Subpart A of Part 124, that is, §§ 124.10, 124.11, 124.12, 124.13 and 124.14. Finally, as discussed in the above excerpt from the May 11, 1984, preamble, if the owner or operator still is dissatisfied with the Regional Administrator's decision regarding his variance request, he may apply for a permit (under § 144.25(c)), and ultimately appeal the permit conditions, if he believes they are not appropriate, under § 124.19. (Of course, no "appeal" of a field-specific injection pressure limitation, or of an operator-specific injection pressure variance lies under 124.19, as these pressure limitations are not appealable "permits" under that section; an application for a permit, pursuant to § 144.25(c), and a final permit decision in response to that request, are prerequisites to a § 124.19 appeal.)

Second, the Agency does recognize that in certain cases enhanced recovery operators may operate at pressures which exceed the fracture pressure of the injection zone. The proposed rule contained provisions that would allow an owner or operator of an enhanced recovery well to inject at such higher pressures (see §§ 147.504(a)(1)(ii), 147.1254(a)(1)(ii) and 147.2103(a)(1)(ii)) and the final rules retain these provisions. Thus, contrary to the commenter's assertions, the rules would not automatically prevent an enhanced recovery operator from injecting at pressures which exceed the injection zone fracture pressure. The requirement that the owner/operator demonstrate that such higher injection pressures will not fracture the confining zone or cause fluid movement into a USDW is consistent with, indeed, mandated by, the SDWA.

Third, the Agency accepts the premise that, in many cases, owners or operators of enhanced recovery wells and hydrocarbon storage wells have a vested interest in not fracturing confining zones, thus decreasing the risk that such fractures will result. However, in some cases lost injected fluid, not significant in commercial terms, may give rise to USDW contamination that is significant. Consequently, while a permit is the appropriate vehicle for

identifying and authorizing *increased* injection pressures for most owners or operators, the Agency believes that for the reasons outlined enhanced recovery operations and hydrocarbon storage wells should be established by rule, with procedures to establish more tailored maximum pressures on a field or unit basis.

Finally, the UIC minimum requirement regulations have always contained provisions which limit injection pressures. In specifying a numerical standard for units and formations, the Agency will merely be applying these general minimum standards to specific situations. The only other way to meaningfully apply a limit on maximum injection pressures consonant with the SDWA's protective mandate would be through a permit. In order to minimize the burden on owners or operators of enhanced recovery operations, the Agency decided in its original promulgation to allow owners and operators of enhanced recovery wells to be authorized by rule rather than permit.

The Agency recognizes that the general standard to be used in setting appropriate field pressures (e.g. the fracture pressure of the injection zone) is a conservative one. It is for this reason that EPA proposed and is promulgating a simplified procedure for allowing owners or operators to inject at higher pressures. Moreover, the majority of comments from oil and gas operators made on the September 2, 1983, proposal indicated that, in most instances, operators of enhanced recovery operations often do not wish to fracture the injection zone.

The Agency believes that the promulgated approach is a balanced one that meets three important objectives. First and foremost, consistent with the statutory mandate of the SDWA, it maintains the protective standard of the existing UIC program and provides for the establishment of specific values as necessary to implement that standard. Second, it allows for full consideration of relevant physical and geologic conditions that may vary across a State. This approach, therefore, avoids any potential unnecessary rigidity that could be imposed by a more conservative and less specifically tailored standard. Third, the adopted approach accomplishes these objectives in the least burdensome manner possible, without requiring permits from enhanced recovery and hydrocarbon storage wells and without requiring the great majority of facilities to undergo a well-by-well examination.

Commenters expressed concern that the Agency, in listing what it deemed appropriate data for defining injection pressures, intended that those examples listed in the proposal be the only data acceptable. The Agency, in the proposal, noted that the examples listed were among ". . . data in the category of reasonably establishing the injection zone fracture pressure." (49 *FR* 20240, May 11, 1984). The list was not intended to be all-inclusive and other appropriate data may serve to establish appropriate pressures.

C. Cementing and Casing Requirements

The Agency proposed casing and cementing requirements in Part 147 which the Regional Administrator could impose on operators of wells authorized by rule for life, when he determines the wells may not be in compliance with the existing minimum requirements in § 144.22(a)(8) (recodified at § 144.28(e)) and § 146.22. These sections essentially state a performance requirement that wells be cemented and cased to prevent the movement of fluids into or between strata.

Comments were received on this proposal, particularly regarding §§ 147.504 and 147.2103. Comments were also made on §§ 147.2104 and 147.1754, which proposed to apply these cementing requirements to all new wells. Finally, several commenters raised questions on the cementing requirements which the Agency proposed to apply to owners or operators of wells on the Osage Mineral Reserve. These latter comments are addressed in Subpart GGG, since the cementing requirements proposed for the Osage program were somewhat unique. This following section addresses the comments raised on the cementing and casing requirements specified in the other sections listed above.

One commenter strongly supported the Agency's proposed approach. The commenter noted existing rule-authorized wells would be allowed to continue to operate as constructed as long as they did not allow the movement of fluids into USDWs. The commenter went on to express support for the establishment of standards in the regulations which would be applied to owners or operators who did not comply with the performance standards in § 146.22 (*See also* § 144.28(e)).

Another commenter maintained that the economics of enhanced recovery and hydrocarbon storage dictate that owners or operators construct and maintain wells in a manner that assures that the injection zone is isolated. The commenter contended that because of this economic incentive the method of isolating injection zones could and should be left to the operator.

EPA does agree that the economics of enhanced recovery operations encourage operators to identify some leaks, and when they become sufficiently large, to fix them. However, such an incentive does not relieve the Agency from the need to assure proper construction of these wells in accordance with the requirements of the SDWA. Depending upon the characteristics of the reservoir and other specifics of the operation, there could be significant leaks that would not translate into significant economic losses. Moreover, improper cementing of the borehole through strata other than the injection zone could allow fluid to migrate from one formation to another, a situation that would have no effect on the enhanced recovery operation, but which could result in significant contamination of a USDW. Finally, the Agency does apply a performance standard to existing wells as the commenters urge. The more specific cementing requirements enumerated are applied only when the well may be causing fluid movement into or between USDW's. Even when this is the case, the Director may specify other requirements tailored to a specific well or wells. In view of the above, the Agency is retaining requirements as proposed. (*See* 49 FR 20153–20154, May 11, 1984, for a more detailed discussion of the Agency's reasons for adopting the above approach.)

Commenters objected to the level of specificity in §§ 147.1754 and 147.2104. These sections establish requirements for new wells and for existing wells which are being converted to injection wells. Commenters maintained that a single performance standard would be more appropriate. After consideration, the Agency is promulgating the requirements as proposed. The standards established in the sections are appropriate in most cases and are meant to apply to new injection wells. Thus, the burden to the operators for complying with the stated requirements would be minimal. The Agency does agree that, under some conditions, it may be desirable to establish other standards more suited to an individual well or set of wells. Again, the rules as proposed recognize this need and provide for it. The Regional Administrator may, under 147.2104, impose additional requirements or substitute alternative requirements when appropriate.

Accordingly, while the Agency does agree that these requirements are not universally applicable, we believe them to be generally appropriate and we have

provided for alternative requirements when necessary or desirable.

D. Plugging and Abandonment

One commenter suggested that requiring the operator to submit a plan within one year of a program's effective date specifying how the well was to be plugged was an unnecessary burden. The commenter went on to point out that Class II wells typically have lifetimes of 30 years and that plans submitted in advance of actual closure would not reflect state-of-the-art technology. Finally, the commenter suggested that EPA require a single plugging plan 45 to 60 days before abandonment.

In response, EPA notes that the amendment in § 144.28(c)(2)(i) is not a part of this rulemaking. That requirement was proposed on September 2, 1983, and promulgated on May 11, 1984, after extensive public comment. (For a detailed discussion of Agency's reasoning, see the preamble discussion for the May 11, 1984 rulemaking at 40 FR 20128 et. seq.) Nevertheless, the Agency will briefly address the concerns raised by the commenter. The Agency does not agree with the commenter for several reasons. First, as explained in the promulgation of this requirement, we do not agree that the requirement to submit the plan in § 144.28(c)(2)(i) represents a significantly increased burden on operators. The requirement that operators develop and maintain a plan which is acceptable to the Director for plugging and abandoning wells is an existing requirement of the UIC minimum requirements regulations. The only additional requirement proposed in § 144.28(c)(2)(i) was that the plan be submitted to the Regional Administrator. Even in cases where the owner or operator has hundreds of wells this is not a significant burden, since, to the extent that the wells are similar, are in the same field, and penetrate to the same formation they will be plugged in the same manner and an operator need only submit a single "key" plan covering such wells.

Second, the Agency does provide for updated plans to be submitted, thus providing for changes in plugging methods. In fact, the Agency requests such changes 45 days before actual plugging, just as the commenter suggests (see § 144.28(c)(2)(ii)).

Finally, the plugging plan specified in § 144.28(c) cannot be viewed in a vacuum. The requirement is meant to complement financial responsibility requirements in § 144.28(d). That section requires the operator to maintain "financial resources * * * to close, plug, and abandon the underground injection operation in a manner prescribed by the Director." In order for the Director to make such a determination, he must have knowledge of how the operator contemplates plugging the well. Accordingly, the Agency believes that the minimal administrative burdens caused by this section are necessary and justified by the requirements of the Safe Drinking Water Act and previously promulgated regulations.

E. Area of Review

The Agency proposed, for several of the programs, to limit the options for establishing the area of review to the minimum fixed radius as described in § 146.6(b). In proposing this approach the EPA noted that the potentially large number of wells involved, together with the existence of many formulae, could slow implementation considerably.

One commenter agreed that reliable mathematical models might not be available for many areas, but suggested that the option to choose a model when one is available should be maintained since that would be the best method for determining "actual" area of review.

After considering the comment, EPA intends to promulgate the requirement as proposed. The area of review merely establishes the boundary of that area around a proposed injection facility within which the applicant for a permit must identify the location of wells which penetrate the injection zone, and (for certain Class II wells) the area within which he must identify any additional wells potentially affected by operating pressures. The Administrator will approve or disapprove each application based upon a review of information available for defining the proposed injection operation, the geology of the area, and other activities in the area.

The Agency noted when this requirement was initially proposed that the Director may solicit input from owners/operators on which methods might be appropriate, but the decision as to how to determine area of review has always rested with the Director. Accordingly, in selected jurisdictions the Agency is deciding to use only a fixed radius.

Comments Not Appropriate to This Rulemaking

Several commenters addressed issues which were not subjects of this rulemaking. For example, one such commenter suggested that any waste which is combustible be incinerated, rather than disposed of in injection wells. Another commenter suggested that the Agency prohibit well injection, and that industry should bear the burden of pollution-free disposal. Additionally, one commenter noted that current land use inhibited recharge and contaminated surface and ground waters.

The Agency is mindful of its responsibility to protect the environment and we appreciate the concerns raised. The issues discussed are important; however, the Agency, in this rulemaking, is attempting only to develop sound, balanced regulations for directly implementing UIC programs in States without approved UIC programs. This is not the proper forum for a reassessment of already promulgated rules establishing the minimum requirements for State UIC programs. *See* 40 CFR Parts 144, 145 and 146. Neither is this the appropriate place to discuss more general topics concerning the Agency's missions and responsibilities.

Coordination With States

One commenter urged EPA to approve the State-administered programs in Florida and Mississippi, noting that the benefits of a single program administered by the State were significant, and that the burden to industry of complying with dual programs was significant.

In response, the Agency notes that it has always been our goal to have the States administer the UIC program. EPA has worked diligently for several years to encourage States to identify or obtain such authorities and requirements and apply for program approval. In the above States, negotiations are continuing on necessary changes to the State's application. However, the Agency is precluded by law and regulation from granting primary enforcement authority until a State has demonstrated authority and statutory and regulatory provisions which meet the Federal requirements. Progress is being made towards that end. However, the Act requires that either approved State programs or Federal programs be established, and further delay is unwarranted. Moreover, the Agency has entered into a Court-approved Consent Decree to promulgate these Federally-administered UIC programs. As soon as either of these States qualifies for primacy the Agency will act. In the interim, we hope to minimize the effect of dual programs by working with the States whenever possible to match the federal regulations, within the bounds imposed by the minimum requirements.

IV. State-Specific Subparts

Subpart K—Florida

Subpart K requires all owners and operators of Class II wells to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations specific to Florida, where discretion is allowed, in order to make the Florida Class II UIC program appropriate and amenable to the combination of historic practices and geology unique to the State. EPA is also applying this program to Indian lands in the State.

Maximum Injection Pressure

As explained in Part IV.B. of this Preamble, EPA's approach to establishing pressure limits for existing operations is to set a conservative statewide value for Class II saltwater disposal wells, and to require submission of information that will enable the Agency to establish formation-specific values for Class II hydrocarbon storage and enhanced recovery wells. This is the approach being promulgated today for Florida.

Casing and Cementing

As explained in Part IV.C. of this preamble, EPA's approach for existing wells is to establish state-specific casing and cementing requirements that apply when the Regional Administrator determines that a well may not be in compliance with the standards in the minimum requirements that prohibits the movement of fluids. EPA is promulgating specific casing and cementing requirements for the Florida program according to this approach.

Area of Review

As discussed in Part IV.E. of this preamble, the Agency proposed to limit the options for establishing the area of review for Class II wells to the minimum fixed radius as described in § 146.6(b) for several programs. The Agency adopted this approach because of the potentially large number of wells involved, and the considerable delay in program implementation that could be caused by processing requests based on many formulae.

Subpart M—Hawaii

The State of Hawaii does not have an EPA-approved UIC program for any Class of wells within the State. EPA, therefore, must propose a program for all classes of wells. Because EPA was unaware of any existing Class I, II, III, or IV wells within the State, it did not promulgate any specific provisions for existing wells authorized by rule. Class V wells will be inventoried, but no permitting or other regulatory action beyond the requirements of 40 CFR Parts 144 and 146 are proposed at this time. EPA has determined that the minimum program requirements set forth in 40 CFR Parts 124, 144, and 146 were appropriate for this jurisdiction and will require all owners/operators to comply with these UIC regulations.

Applicants who seek a Federal UIC permit in this jurisdiction should be aware that the State of Hawaii has developed regulations which may prohibit construction and operation of Class I, II, III, and IV injection wells. Such State rules are not prohibited by the SDWA, because section 1423(c) provides that "nothing in this [Act] shall diminish any authority of a State . . . to adopt or enforce any law or regulation respecting underground injection".

Subpart R—Kansas-Indian Lands

Subpart R contains the UIC program for Kansas, which, for non-Indian lands, is administered by the State. EPA is adding to Subpart R requirements comprising the UIC program for Indian lands in Kansas, to be administered by EPA. The Kansas Indian lands program consists of the UIC minimum requirements regulations at 40 CFR Parts 124, 144 and 146.

Because EPA is not aware of any Class I, II, III or IV wells on Indian lands in Kansas, it is not proposing any specific provisions for existing wells authorized by rule. Class V wells will be inventoried within one year of promulgation of the program, but no permitting or other regulatory action beyond those in 40 CFR 124, 144, and 146 is proposed at this time.

The Agency has taken this approach, rather than adopt a program tailored to the state-administered program in effect in the rest of the State, primarily because EPA is not aware of any Class I, III, or IV wells in existence in the State. The Agency also is unaware of any significant level of injection activity anticipated for the future. Thus, development of a Federally-administered Indian lands program tailored after the state-administered requirements is not necessary to relieve owners and operators of any burden which could result from different approaches being applied to similar operations in the same State. The application of the UIC minimum requirements regulations is, therefore, the most straightforward and simple means of putting into effect the requirements necessary to cover any injection activity that may become a possibility in the future. Discussions with appropriate tribal organizations and with the Bureau of Indian Affairs indicated concurrence with the approach.

Subpart Y—Minnesota

Subpart Y contains the EPA-administered program for Minnesota. EPA is adding to Subpart Y provisions establishing a unique program for Indian lands within the State. The EPA-administered program in the rest of the State, promulgated May 11, 1984, contains provisions specifying requirements for receiving a Federal permit. State law and policy, however, prohibits most well injections, and as mentioned above, the Safe Drinking Water Act clearly provides that nothing in the SDWA "shall diminish any authority of a State . . . to adopt or enforce any law or regulation respecting underground injection". (see SDWA Section 1423(c)). In response to Indian wishes for a program at least as stringent as the State's, the Agency is banning injection into all classes of wells except Class V, and regulating Class V wells in accordance with the applicable provisions of 40 CFR Parts 124, 144, and 146. This action is being taken on the basis of comments received from representatives of the seven Chippewa Reservations in the State. These comments favored a ban on injection based on the geology and hydrology of the Reservations as well as on consistency with the State approach. Since these Reservations represent the majority of the tribal land in the State, their comments are viewed as being the preference of the majority of the Indians in the State.

Subpart Z—Mississippi

Subpart Z requires all owners or operators of Class II wells to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this program contains regulations specific to Mississippi, where discretion is allowed, in order to make the Mississippi Class II UIC progaram appropriate and amenable to the combination of historic practices and geology unique to the State. EPA is applying this program to Indian lands in the State.

Maximum injection Pressure

As explained in Part IV.B. of this Preamble, EPA's approach to establishing pressure limits for existing operations is to set a conservative statewide value for Class II saltwater disposal wells and to require submission of information that will enable the Agency to establish formation-specific values for Class II hydrocarbon storage and enhanced recovery wells. This is

the approach promulgated today for Mississippi.

Casing and Cementing

As explained in Part IV.C. of this preamble, EPA's approach for existing wells is to establish state-specific casing and cementing requirements that apply when the Regional Administrator determines that a well may not be in compliance with the standards in the minimum requirements that prohibits the movement of fluids. EPA is implementing specific casing and cementing requirements for the Mississippi program according to this approach.

Area of Review

As discussed in Part IV.E of this preamble, the Agency is limiting the options for establishing the area of review for Class II wells to the minimum fixed radius as described in § 146.6(b). The Agency is adopting this approach due in part to the potentially large number of wells involved, and the considerable delay in program implementation caused by processing requests based on many formulae.

Subpart KK—Ohio

Subpart KK requires all owners/operators of Class I, III, IV, and V wells to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this program contains regulations that supplement the UIC regulations, where discretion is allowed, in order to make the Ohio UIC program appropriate and amenable to the combination of historic practices and geology unique to Ohio. On September 22, 1983, EPA granted the State of Ohio primary enforcement authority to operate a UIC Class II well program. Ohio has not received primary enforceement authority for Class I, III, IV, and V wells. EPA will oprate the program for injection wells other than Class II wells, until such time as Ohio is granted primary enforcement authority over the remaining classes of wells.

Maximum Injection Pressure

EPA is applying to all Federally-implemented programs the use of a simple formula that EPA will use in each State program to establish maximum injection pressures, measured at the wellhead, for wells authorized by rule. The regulatory approach adopted here is discussed in detail in Part IV.B. of this preamble. An appropraite fracture gradient for Ohio is 0.75, psi/ft, according to the Ohio Department of Natural Resources and Ohio Environmental Protection Agency. This number is also within the range suggested by Warner and Lehr and is, therefore, being used in Ohio. EPA recognizes that this may be a conservative figure for some areas, but, as discussed above in this preamble and in the May 11, 1984 regulations (49 FR 20138 *et seq.*), operators may receive permission to operate at pressures greater than the pressure being proposed here by demonstrating that the injection does not cause the movement of fluids into or between USDWs. The Agency believes the figure is consistent with the SDWA, without being unduly restrictive to operators.

The State of Ohio has submitted an application for primary enforcement responsibility for Class I, III, IV and V wells. If this program is approved by EPA, the Federally-administered program will be rescinded.

Subpart QQ—South Dakota

Subpart QQ requires all owners or operators of Class I, III, IV and V wells to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations, where discretion is allowed, in order to make the South Dakota UIC program appropriate and amenable to the combination of historic practices and geology unique to South Dakota.

Since the May 11, 1984, proposal of an EPA-administered program for Class II wells in South Dakota, the State has submitted a final application for primary enforcement authority for a program to regulate the Class II wells. After careful review, EPA determined that the State's application was adequate and approved the State-administered program on October 10, 1984. This approval eliminates the need to promulgate an EPA-administered program for Class II wells except for those located in Indian Lands.

Maximum Injection Pressure

As exaplained in Part IV.B. of this preamble, EPA's approach to establishing pressure limits for existing operations is to set a conservative statewide value and to provide for injection at higher pressures under the circumstances discussed above in the preamble. This is the approach being promulgated today for South Dakota.

Casing and Cementing

As explained in Part IV.C. of this preamble, EPA's approach for existing wells is to establish state-specific casing and cementing requirements that apply when the Regional Administrator determines that a well may not be in compliance with the standards in the minimum requirements that prohibit the movement of fluids. EPA is applying specific casing and cementing requirements for the South Dakota program according to this approach. In response to comments, the Agency is deleting requirements listed in §147.2104, as explained in Part IV.C. of the preamble.

EPA-State Coordination

All Class I and Class III wells in South Dakota are required to apply for permits prior to initiation of construction. Such more stringent requirements are not prohibited by the SDWA, because § 1423(c) of the SDWA provides that nothing in the Act "shall diminish any authority of a State * * * to adopt or enforce any law or regulation respecting underground injection".

Subpart YY—Wisconsin

Subpart YY sets forth the UIC program for Wisconsin, which is administered by the State as approved by EPA. However, since Wisconsin did not assert jurisdiction over Indian lands in the State, EPA is promulgating a program applicable to those lands. EPA is therefore adding to subpart YY an EPA-administered Indian lands program.

This program consists of a prohibition of all underground injection. This approach is the one preferred by the majority of the tribal organizations in the State. The approach is taken because of the very high value the Indians place on ground water in their reservations. In addition, this approach is largely consistent with the approved state-administered program in effect in the rest of the State, which prohibits all injections other than certain Class V wells.

Subpart BBB—Puerto Rico

Subpart BBB requires all owners or operators in Puerto Rico to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146.

Because EPA is not aware of any existing Class I, II, or III wells in Puerto Rico, it is not proposing any specific new provisions for existing wells authorized by rule. Class V wells will be inventoried but no permitting on other regulatory action beyond the existing federal UIC regulations is proposed at this time.

All new Classes I, II, and III wells in Puerto Rico are required to apply for permits prior to initiation of construction.

One commenter requested that EPA exempt the aquifer beneath the Union Carbide Caribe facility located in Penuclas, Puerto Rico. If Union Carbide formally requests an aquifier exemption,

EPA will review the application and take appropriate action.

Subpart CCC—Virgin Islands

Subpart CCC requires all owners or operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146.

Because EPA is not aware of any existing Class I, II, III, or IV wells in the Virgin Islands, it is not specifiying new provisions for existing wells authorized by rule. Class V wells will be inventoried but no permitting or other regulatory action beyond the current federal UIC regulations is being developed at this time.

All new Classes I, II, and III wells in the Virgin Islands are required to apply for permits prior to initiation of construction.

Subpart GGG—Osage Mineral Reserve

A. Background

The Osage Mineral Reserve in Oklahoma was established by an Act of Congress in 1906, which allows the Osage Indian Tribe, through the Bureau of Indian Affairs (BIA), to establish leasing policies and obtain royalties from oil and gas production. Because of the nature of this grant of authority, the State of Oklahoma does not regulate mineral extraction activities on the Reserve, and the Oklahoma UIC program for Class II wells (those related to the production of oil and gas) approved by EPA on December 2, 1981, does not apply to injection activities on the Reserve. Consequently, EPA is developing a Class II UIC program for the Osage Mineral Reserve. This subpart establishes such a program. A program to regulate Class I, III, IV, and V wells will be developed and promulgated separately.

B. Criteria for Establishing the Osage UIC Program

EPA's national UIC program requirements at 40 CFR 144.2 clarify the authority of the Agency with respect to prescribing UIC programs for Class II wells on Indian lands. Section 144.2 provides that the Administrator may depart from the Agency's general UIC regulations as long as he considers tribal interest and preferences, consistency with the program of the State in which the Indian lands are located, and other factors as are necessary and appropriate to carry out the statutory requirements of the SDWA. With respect to Indian lands programs generally, EPA proposed on September 2, 1983, (48 FR 40098) four options for the contents of Indian lands programs to be implemented by EPA. These include: (1) A program consisting of current UIC minimum requirements; (2) a program consisting of the requirements of the State-administered program for the State in which Indian lands are located; (3) a program consisting of a combination of Federal and State requirements; and (4) a program different in some respects from both the Federal UIC program and the approved State program containing requirements that respond to concerns and wishes of the affected tribal government.

In consideration of the large number of wells in the Osage Mineral Reserve, and the fact that the Reserve already has a considerable history of regulation of Class II wells, EPA has decided that the most appropriate approach is to tailor a program specifically to the Reserve, combining the approaches of several of the proposed options. The program being promulgated today has been developed by drawing from existing BIA requirements, requirements from the approved Oklahoma UIC program in effect in the rest of the State, the EPA UIC minimum requirements, and the expressed preferences of the Osage Tribe. Following is a brief explanation of how three major sources (the existing BIA program regulating oil and gas production, the Oklahoma Corporation Commission Class II UIC program, and the EPA UIC minimum requirements at Parts 124, 144, and 146) were used in developing the Osage County requirements.

Bureau of Indian Affairs

The BIA is currently regulating all oil and gas production in Osage County and is responsible for the prevention of pollution by oil and gas producers under the authority of 25 CFR Part 226. As a part of this responsibility, BIA requires injection well operators to gain Osage Agency, BIA, approval before drilling, converting, or plugging an injection well. The Osage UIC program incorporates many requirements of the current BIA program but will expand upon these requirements. BIA and EPA will work together based upon the regulations administered by each Agency. A single permit, containing existing BIA conditions and the conditions applied by EPA as part of this rulemaking, will satisfy the requirements of both Agencies. Some of the specific aspects of the BIA program which EPA is adopting include the following: bonds required by 25 CFR Part 226; BIA forms; setting plugs in abandoned wells to protect currently used aquifers as well as at the base of the lowest USDW; and testing newly converted injection wells to at least 200 psi to insure that the casing, tubing and packer operate correctly.

Oklahoma Corporation Commission

The Oklahoma Corporation Commission received primacy for the Class II injection well program for non-Indian lands in Oklahoma on December 2, 1981. Since Osage County is located in Oklahoma and many well operators have facilities both in Osage County and in the rest of the State, the proposed program included several requirements similar to the State requirements. Some of the proposed provisions similar to Oklahoma's included: plugging requirements, the one-fourth inch female fitting to the tubing/casing annulus, and corrective action requirements. Based on comments received during the public comment period, however, changes were made to these program areas; therefore, the second and third requirements now differ somewhat from the State's.

EPA's UIC Minimum Requirements (Parts 124, 144, and 146). This program contains several provisions similar or identical to the EPA regulations, although in some cases they were modified to be more flexible. Some of the sections used are: area permits, emergency permits, permit modifications and terminations, and the appeals procedure.

The approach described above was considered superior to the several other options considered. Adoption of a program identical to the State program approved in Oklahoma would have ensured consistency of the Osage program with the adjoining jurisdiction, but would disrupt the existing regulatory program of the BIA and ignore the preferences of the Osage Tribe for matching certain of the standards and procedures of that BIA program. Another option was to adopt a program consisting of the precise minimum requirements of the national UIC regulations. This option was rejected as being inconsistent with both the BIA and the Oklahoma State programs, ignoring the advantages of coordination and cooperation between programs, the desirability of relative uniformity across jurisdictional lines, and the preferences of the Osage Tribe. At the same time, under the adopted approach, the substantive standards of the EPA minimum requirements have been retained with only few and limited exceptions.

These rules are presented in four parts. Sections 147.2901 to 147.2908 contain general provisions applying to all Class II injection wells in Osage County. These provisions include explanations of the area of review

concept, the plugging and abandonment requirements, and instructions for obtaining an emergency permit. Sections 147.2909 to 147.2915 contain the rules for authorization of existing Class II injection wells (defined as those wells the construction of which was approved by the Bureau of Indian Affairs (BIA), pursuant to 25 CFR 183, prior to the effective date of this UIC program). Since these wells will be authorized by rule for the life of the well, the operators will not automatically have to apply for an EPA permit (a well authorized by rule may be called in for a permit by the Regional Administrator, under certain circumstances, pursuant to § 147.2915). However, these rules do contain construction, operation, monitoring and reporting requirements with which the operators must comply. Sections 147.2916 to 147.2928 contain the instructions for submitting a permit application, as well as construction, operation, monitoring, and reporting requirements for injection wells to be drilled or converted after the effective date of the program. Also included are requirements for corrective action, area permits, and permit transfers, modifications, and terminations. Standard permit conditions are outlined in these sections, as well as procedures for the appeal of permit decisions. Section 147.2929 contains the administrative permitting procedures such as preparing draft permits, giving public notice of important actions and responding to comments.

C. Organization and Content

The Osage UIC program promulgated today is codified as Subpart GGG of Part 147 of 40 CFR. EPA established Part 147 to contain all Federally-administered UIC programs as well as notices of approval for State-administered programs. To help inform the public of all requirements applicable in each State, EPA adds to Subpart LL, which describes the approved programs administered by Oklahoma, a reference explaining that the requirements for the Indian lands program for the Osage Mineral Reserve in the State are set forth at Subpart GGG.

The four groups of standards just described are the same basic program elements contained in the Federal UIC minimum requirements: general program requirements, program requirements and technical standards for wells authorized by rule, program requirements and technical standards for wells authorized by permit, and procedural requirements (including public participation) for the permitting process. Although the format or means of administration of these standards varies from the minimum requirements, the substantive standards themselves are equivalent to the minimum requirements with only few and limited exceptions.

Some variations result from attempts to maintain consistency with the program of the Oklahoma Corporation Commission applicable in the rest of the State. Although that program has been approved by EPA, it does not in every case meet precisely the UIC minimum requirements regulations, because strict equivalence is not required of State Class II programs under Section 1425 of the SDWA. Other variations result from conforming the Osage program to the existing BIA program, or to tribal preferences. As mentioned above, § 144.2 of EPA's regulations provides the flexibility to promulgate programs on Indian lands that contain such variations. The major differences, and rationale for the differences, are outlined below.

§ 147.2902 Definitions (Minimum Requirements § 144.3)

One commenter questioned EPA's inclusion of "pulling of tubular goods" in the definition of a "well workover" noting that it was not included in BIA's requirement. Under BIA requirements, a permit is required for well workovers and the commenter apparently believed that EPA's inclusion pulling the tubular goods would require operators to get a BIA permit. However, BIA's definition of a workover does not include the pulling of tubular goods, and BIA permit requirements for workovers will continue to apply to only those activities that are described under the BIA definition. The Agency's action today will not change existing BIA requirements as to whether the Agency should concern itself with activities such as pulling of the tubular goods. The EPA under the SDWA has a different mandate than the BIA and, therefore, concerns itself with activities which the BIA does not. We believe it a legitimate activity, consistent with the goals of the Act and the minimum standards regulations, that EPA have knowledge of occasions when the tubular goods are pulled. On such occasions, EPA may desire to observe the condition of the pipe, or schedule tests in a manner less burdensome to the operator. We, therefore, left our proposed definition unchanged since it does not affect existing BIA permitting requirements.

In the proposal, Class II well definitions ("Class II wells, Existing Class II wells and New Class II wells") were incorrectly identified as Class III well definitions. Corrections to each definition to properly identify it as pertaining to Class II, have been made.

Prohibition of Unauthorized Injection (Minimum Requirements § 144.11); Osage § 147. 2903)

One commenter suggested that EPA add a provision to the Osage regulation similar to the Oklahoma Corporation Commission's (OCC's) provisions Rule 3–311 and 3–312. OCC's provision states that reserve pit fluids may be injected provided that OCC grants approval. OCC also has in place a provision for temporary emergency authorization of such injections.

Section 147.2903 requires that any underground injection must be authorized by permit or rule. In addition, § 147.2906 provides for the issuance of emergency permits. Therefore, we believe that the program requirements specified, if not identical to the OCC provisions, are at least substantially similar. The Agency can grant emergency authorizations when appropriate with minimal administrative procedures.

One commenter expressed concern that the proposed emergency authorization (§ 147.2096(a)(2)) was not adequate to protect correlative rights apparently because the standard in that section refers to loss of oil or gas, regardless of who the operator might be. In response, EPA would like to point out that a third provision at § 147.2906(a)(3) cites delay in production as justification for an emergency permit. For either of the above requirements, EPA intends that the owner or operator make the demonstration. Accordingly, it is obvious that the Agency is concerned about loss or delay of oil and gas production to an operator, and these correlative rights would be protected.

Area of Review (Minimum Requirements § 146.06); Osage § 147.2904)

For the Osage program, EPA defines the area of review as "a fixed radius of one-fourth mile from the well, field or project." However, the zone of endangering influence is an area around the well or project calculated by EPA, that may be greater, equal to or less than one-fourth mile. One commenter suggested that EPA define the zone of endangering influence as less than or equivalent to the area of review.

After carefully considering the comment, EPA is promulgating the one-quarter mile fixed radius as proposed and as promulgated previously in § 146.6. The area of review merely establishes the boundary of that area around a proposed injection facility within which the applicant for a permit must identify the location of wells which

penetrate the injection zone and for certain Class II wells, operating at high pressures, identifying any additional wells affected by the operating pressure. The Regional Administrator will approve or disapprove each permit application based upon a review of information available for defining the proposed injection operation, the geology of the area, and other activities in the area. Permits will be granted only when it is demonstrated that underground sources of drinking water will not be endangered. We have decided to retain the zone of endangering influence concept as proposed in 147.2904, because we believe that it is consistent with the Agency's mandate to protect USDWs.

Plugging and Abandonment Plan (Minimum Requirements): §§ 144.21(c)(5), 144.22(a)(5), and 144.52(a)(6)); Osage: § 147.2905

EPA minimum requirements require owners or operators to prepare and maintain a plugging and abandonment plan within the first year of the UIC program. The Osage regulations require such a plan to be developed at least five days before plugging, which must occur within one year of the termination of injection. This approach maintains the advantage of consistency with the adjoining jurisdiction, since the approved Oklahoma program does not require such plans to be prepared prior to actual plugging. In addition, the Agency believes that this difference is justified on the basis of the unique characteristics of the Osage program.

For several reasons, the details of plugging and abandoning wells on the Osage Reserve are likely to be uniform and, therefore, plans will be easier to process than for most other programs. First, the Osage program covers only Class II wells and the construction details of the wells are generally similar. Second, there are a limited number of producing formations within the Osage Reserve, the disposal operations are confined to a few discrete strata. The geology of these strata and overlying strata is well established. Since plugging and abandonment procedures are largely a function of the well construction and the geological and geohydrologic characteristics of the site, the task of developing and evaluating the plans should be relatively simple. Thus, equivalent protection for USDWs is provided in the Osage program without requiring early preparation of plugging and abandonment plans.

Notice of Plugging and Abandonment (Minimum Requirements: §§ 144.21(c)(4), 144.22(a)(4), 144.51(n), and § 144.28(j) and (c)(2)(iii) and 144.52(a)(6)); Osage § 147.2905

EPA's minimum requirement regulations currently require notice of plugging and abandonment but leave the minimum advance notice time to the discretion of the Director. For EPA-administered programs in general, EPA has established this time period at 45 days before plugging and abandonment, with the possibility of a shorter time if approved by the Regional Administrator. (See § 144.28(j)(2), 49 FR 20185, May 11, 1984). EPA is establishing this time period at five days before plugging and abandonment for Osage County.

The primary purpose of the 45 day notice was to allow EPA to review plans and make arrangements to observe the plugging operation if the Agency wished to do so. The same factors described above that demonstrate the lack of a need to require advance preparation of plugging and abandonment plans support the reasonableness of a short notice period. In view of these factors, i.e., that Osage county is relatively small, and the EPA is operating a field office in the county, the review of plans and observation of plugging can still be arranged within the five day time period.

One commenter objected to this five day notice requirement, noting that a minimum 24 hours prior notice was already required by the Osage Agency. The commenter suggested that EPA's requirement was redundant and should be reduced to 24 hours prior notice of plugging so that a single notice could be given. The EPA agrees that a single notice would be more practical and notes that the Osage Agency's 24 hour requirement is a minimum prior notice. Thus, the operator could notify the Osage Agency and EPA at the same time and still comply with both Agency requirements.

EPA's minimum requirements regulations require that wells be plugged when they are abandoned (§ 146.10), but provide that temporary and intermittent cessation shall not be considered abandonment (§§ 144.21(c)(5), 144.22(a)(5), and 144.52(a)(6)). For EPA-administered programs generally, EPA has provided that any cessation of injection that extends longer than two years will not be considered "temporary and intermittent," and that, therefore, the well must be plugged unless the owner or operator notifies the Regional Administrator and demonstrates maintenance procedures that will ensure no endangerment of USDWs during the period of abandonment (see § 144.28(c)(2)(ii), 49 FR 20183, May 11, 1984.) In the proposed Osage regulations, EPA specified a six-month plugging and abandonment period in Osage County. Most commenters expressed strong objection to this requirement. One landowner expressed agreement with the six-month period. Most commenters, however, felt that six months is not an adequate time period. They indicated that economic fluctuations within the industry often dictate that wells be temporarily abandoned and brought back into service when conditions warrant it. They, therefore, felt that six months would not be adequate time for a realistic assessment. Finally, one commenter objected to the specific requirements applied to wells which were temporarily abandoned (See § 147.2905(a)). As was stated in the proposal, one of the main reasons for the six-month requirement was to achieve consistency with OCC requirements that apply elsewhere in Oklahoma.

After considering comments opposed to and in support of the proposed six-month plugging and abandonment requirement, EPA has decided to modify § 147.2905 to require that a well be properly plugged within one year of ceasing the injection unless the owner or operator demonstrates that the well will be reactivated. This modification will reflect more accurately the conditions which dictate a well's future usefulness and at the same time, EPA maintains control over timely plugging and abandonment. During the lapsed period between when these regulations were being drafted and when they were proposed in the **Federal Register** OCC modified its plugging and abandonment requirement to one year. Therefore, EPA's one-year provision in Osage County is consistent with the State's, and is responsive to both public comments and to tribal preferences.

EPA still intends, however, to retain the requirements of § 144.2905(a) which require operators to perform mechanical integrity tests annually. The commenter who raised this issue proposed monitoring of fluid levels in lieu of the MIT tests. EPA would like to point out that the Agency has the authority to approve alternative tests and that under certain circumstances the commenter's proposal could serve as a basis for proving mechanical integrity.

Authorization of Underground Injection by Rule (Minimum Requirements: § 144.21 Osage: §§ 147.2909 to 147.2915)

Under 40 CFR §§ 144.21, and 144.31, owners or operators of existing salt water disposal wells are required to obtain a permit. For the Osage Class II program, existing salt water disposal wells which do not endanger USDWs are authorized by rule for the life of the well unless specifically identified by EPA as needing a permit. It is the preference of the Osage Tribe that owners or operators of existing wells not be routinely subjected to the permit application process, since they have already provided much of this information to the BIA. Furthermore, under Oklahoma's approved Class II program, owners or operators of existing wells are not routinely required to obtain a new permit. Therefore, the Osage provision is consistent with tribal preferences and with the program in effect in the adjoining jurisdiction.

Wells authorized by rule will receive the same technical scrutiny as those being permitted. Wells authorized by rule must meet the same operating, monitoring, mechanical integrity testing, and reporting requirements as wells under permit. EPA will perform an in-depth review of well construction and operation at the time of mechanical integrity testing. This alternative approach will reduce EPA's administrative paperwork burden of issuing permits for existing wells and will allow EPA to accelerate the mechanical integrity testing schedule for salt water disposal wells. The reduced administrative workload will also allow EPA to witness more of these mechanical integrity tests, with the goal of witnessing all mechanical integrity tests in Osage County.

Construction Requirements (Minimum Requirement § 146.22; Osage: 147.2911 and 147.2919)

One operator commented that EPA's proposal to require that wells be equipped with a one-fourth-inch female fitting would impose an additional economic burden on operators. The commenter further stated that an operator usually has a standard fitting within his operation. After considering these comments, we have changed this requirement. Rather than specifying a one-fourth-inch female fitting, the regulation now requires that the operator provide a standard female fitting.

§ 147.2912(a) and 147.2920 Operating Requirements (Minimum Requirements: § 146.8; Osage: §§ 147.2912(a) and 147.292(b)).

Mechanical Integrity Tests

The Agency proposed to allow operators to demonstrate there is no significant leak in the casing, tubing or packer by:

1. A pressure test of the casing/tubing annulus to the maximum injection pressure, but not less than 200 psi; or,
2. Monitoring the pressure in the casing/tubing annulus, following an initial pressure test.

The Agency received more comments on the proposed pressure testing of the casing/tubing annulus than any other provision in the proposed Osage regulations. Most commenters believed that the proposed pressure test was overly restrictive. Some believed that the test itself would cause a casing, tubing, or packer leak. Others stated that many old wells could not pass any pressure test and still other commenters pointed out that in some of their wells, oil is produced through the casing/tubing annulus (dual completions). Most commenters suggested alternative mechanical integrity testing procedures. These included:

1. Monitoring fluid level in annulus to insure that it is constantly lower than the base of any USDW,
2. Using radioactive tracer survey to assure that fluid is going into authorized injection zone,
3. Limiting maximum test pressure,
4. Decreasing minimum test pressure to 100 psig,
5. Using "Mule Tail" test to identify where injection fluid is going, and
6. Waiving the pressure test requirement for wells injecting in a vacuum.

There were several comments on modifying the optional annulus monitoring. Some urged EPA to consider the well to have integrity if there were no pressure on the annulus; another suggested that the annulus be left open and the well would be considered to have mechanical integrity as long as fluid was not observed at the surface; and others suggested the fluid level in the annulus be monitored and as long as the fluid level remained below the base of USDW, the well did not need mechanical integrity testing.

One commenter wanted the option to monitor the injection pressure/flow rate relationship.

Both the EPA general technical requirements for UIC programs (40 CFR Part 146) and the Osage regulations (40 CFR Part 147, Subpart GGG) require as a fundamental minimum that each well have mechanical integrity. The regulations state that all wells must demonstrate that there is no significant leak in the casing, tubing, and packer. Because of this fundamental regulatory requirement and because of the Agency's statutory mandate to protect USDW's, EPA decided to consider no options which would allow wells to operate if there are significant leaks in the casing. For the same reasons, EPA decided not to allow waivers of mechanical integrity testing.

After a thorough review of the comments and other technical data, however, EPA will consider the alternative proposed by the commenters, including:

1. Elimination of the requirement that pressures higher than 200 psi must be applied to the casing/tubing annulus—this should eliminate concern for the destructive nature of the higher pressures and still demonstrate the absence of significant leaks;
2. Elimination of the requirement of an initial pressure test when monitoring the casing/tubing annulus monthly—by requiring the annulus to be filled with a liquid and a positive gauge pressure maintained on the casing/tubing annulus, it can be effectively demonstrated that there are no significant leaks;
3. Addition of (for enhanced recovery wells only) records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate at the wellhead, following an initial pressure test—this is an option provided for in 40 CFR Part 146.08; and
4. Addition of radioactive tracer surveys for detecting leaks—this can be an effective tool in detecting leaks in the tubing and packer, and it can also be used to detect casing leaks if the tubing is pulled.

It is recognized that none of the above tests may provide a suitable test for demonstrating the absence of significant leaks in those wells producing oil through the casing/tubing annulus. The regulation still provides for alternate tests when approved by the Administrator/Regional Administrator on a case-by-case basis. EPA, in consultation with affected operators and other regulatory agencies (States of Oklahoma and Kansas and the BIA), will consider the above alternatives and develop a suitable alternative method which will meet the requirements of the MIT before the dual completion wells are required to demonstrate mechanical integrity.

§ 147.2912(b) Maximum Injection Pressure (Minimum Requirements: § 146.13(a); Osage: 147.2912(b)).

For wells authorized by rule, the Agency proposed to adopt a simple formula that would prescribe injection pressure measured at the wellhead. The formula uses a value of 0.75 psi/ft for the fracture gradient.

The agency received a substantial number of comments on this issue. In general, nearly all commenters believed the general maximum values proposed by the Agency were too low. One noted the formula did not consider friction loss due to small diameter tubing or down-hole devices. Another was concerned that the pressure limits would prevent fracturing during well stimulation.

The Agency agrees with many of these comments. In particular EPA agrees that factors which determine appropriate injection pressures are specific to the particular injection formation, rather than being uniform across the county. It is also recognized that the fracture gradient of 0.75 psi used in the formula is a conservative figure. This approach for Class II salt water disposal wells remains a valid alternative in that those operating at relatively high pressures who wish to continue at those pressures will be required to submit a permit application, with factual fracture gradient data, within the first year. Operators have one year from the effective date of this regulation to comply with the calculated pressure limits, thus allowing operators time to obtain a permit or to make adjustments in their injection pressures. An exception to the calculated limits has been provided for well stimulation. EPA has decided to promulgate a revised approach for specifying limits on injection pressure for enhanced recovery wells. The approach is:

1. Eliminate the proposed county-wide psi/ft fracture gradient value;

2. Require Class II enhanced recovery injection well operators to provide definitive field or formation-specific fracture-pressure data within one year of the effective date of this program; and

3. Develop and specify a field or formation-specific pressure gradient based on these and other related data (See part IV.B. of this preamble for a description of the procedure to be used by the Regional Administrator to establish this field or formation-specific gradient under 147.2912(b)(2)(ii)).

§§ 147.2913 and 147.2922 Monitoring and Reporting (Minimum Requirements: §§ 146.23(b) and 144.26; Osage: §§ 147.2913 and 147.2922).

The minimum requirements require monitoring of the injection pressure and flow rate at least weekly for produced fluid disposal operations and at least monthly for enhanced recovery operations. EPA is adopting the monthly frequency for enhanced recovery operations; however, the frequency for produced fluid operations is being set at monthly as well. EPA believes that the difference between weekly and monthly monitoring is justified by the advantage of consistency with the approved Oklahoma requirements and the preferences of the Osage Tribe and the BIA.

One commenter objected to EPA's proposal approach to monitoring the "nature" of injected fluid. Essentially, EPA specified that an initial analysis be performed, and that subsequent analyses be done only when changes are made in the source or nature of fluid injected (See § 147.2913(d)). The commenter noted that the nature of produced water changes with time, and apparently believed that such changes would have to be reported.

EPA would like to note that it was for this reason that the word "change" was introduced into the requirement. As long as there are no substantive changes or additions to the nature of the produced fluids, the gradual change of concentrations that may occur in brines from a single given formation (source) need not be reported as a change in the nature of injected fluid.

The UIC minimum regulations at § 144.26 require that specific information be submitted to the Director. The Osage program in § 147.2913(a) requires inventory information to be submitted only upon request, because comprehensive well information is already on file with the BIA and the Osage UIC office. Submittal of information already available to EPA would be an unnecessary administrative burden upon the operator.

Application for a Permit (Minimum Requirements: § 144.31; Osage: 147.2918)

EPA has decided that some of the information ordinarily required to be submitted as part of a permit application need not be required for applications under the Osage program. This information includes the following items in § 144.31: paragraph (e)(1) (the activities conducted by the applicant that require him to obtain a permit); paragraph (e)(3) (SIC codes reflecting the products or services of the facility); paragraph (e)(6) (lists of permits or approvals under other regulatory programs); paragraph (e)(7) (map of one mile radius around the facility; and paragraph (e)(8) (brief description of the nature of the business).

Most of these information items are unnecessary because they generally are known and uniform among all facilities regulated by the program, given that the program regulates only a single and well-defined class of wells and is contained within a relatively limited geographic area. With respect to notice of other permits received, the coordination that has already been incorporated into this program between EPA and BIA, the only other permitting authority for injection wells in this area, renders such notice unnecessary.

With respect to the mile radius map, the Osage program does require a map showing the area of reveiw (established in § 147.2905 of the program as one-fourth mile), which will show the main elements of the facility and surrounding area that are of concern. This requirement is consistent with the approved Oklahoma program and the BIA progam.

Two comments were received suggesting that both the area of review and the public notice area be one-fourth mile as opposed to one-half mile. Under the BIA program the notice requirement is limited to adjacent operators. Since that provision would ignore off-set lease operators, we are promulgating the half-mile public notice area. This is similar to OCC notice requirements and the Agency believes that the half mile area will more likely include all affected operators than the one-quarter mile.

The proposed regulations included requirements that plans for corrective action on wells within the area of review and the results of mechanical integrity testing, be submitted with the permit application. Commenters questioned the sequence of those requirements in the permitting process. They pointed out that since corrective actions will be prescribed by EPA and Mechanical Integrity tests will be witnessed by EPA, it is unreasonable to impose these requirements prior to EPA's review of the permit. After reevaluating our requirements based on these comments, we have decided to remove both corrective action plans and mechanical integrity testing from the list of permit application information at 147.2918b (9) and (11). These requirements must still be met prior to operation in accordance with § 147.2920(b) and § 147.2923. In making these adjustments, EPA is merely rescheduling the submission of

information required for permitting and well operation.

Monitoring and Reporting Requirements (Minimum Requirements: § 144.38; Osage: § 147.2922(e)).

An addition (item "e") has been made to this section to include transfer of ownership. This inclusion makes this section consistent with the requirement stated in § 147.2926(a)(1).

Signatories to Permit Applications and Reports (Minimum Requirements: § 144.32; Osage § 147.2925(j)).

For owners or operators that are not individuals, the minimum requirements specify who may sign permit applications and reports according to their position in the corporation, partnership or municipality. The Osage program requires only that the "owner or operator" sign such documents, a standard somewhat less specific than the minimum standards. The Agency is adopting this approach since it is the standard now employed by the BIA. Since the Agency will be using the BIA permit form with some additions, accepting BIA's signatory requirements will enable EPA to implement the program without unduly disrupting the existing program, while still assuring protection of USDWs.

§§ 147.2926, 147.2929(a), 147.2929(d)(2)(i)) Shortening of Certain Notice Periods (Minimum Requirements: §§ 124.10, 144.31(d), and 144.38)

In several instances, the Osage program proposes to use time periods for public notice or notification of the Regional Administrator by the owner/operator which are less than those specified in the minimum requirements regulations. For example, § 147.2929, Public Notice, specifies a public comment period of 15 days, while 40 CFR § 124.10 specifies 30 days. Similarly, § 147.2926, Permit Transfers and § 147.2929(a), Completeness Review, require only 10 day time periods while the minimum requirements at § 144.38 require 30 days of notice for permit transfers, and at § 144.26(d) impose no deadline on EPA for completing reviews. The Agency believes that these lesser time periods are appropriate for the Osage program. The Mineral Reserve is small, the fields well established, and both the Agency and the affected community are well acquainted with the activities occurring there. This allows the necessary review, comment, and action to be accomplished by all involved parties within a shorter time. In addition, the times specified are consistent with those in the Oklahoma Class II program and exceed current BIA requirements. Further, EPA's Osage UIC field office located in Osage County facilitates contact between the Agency and operators. Considering all these factors, EPA believes EPA the shorter time periods proposed in the Osage program to be justified.

The ten day period for completeness reviews of permit applications establishes a time limit where none exists in the minimum requirements. It should be made clear, however, that the Agency in no way intends that failure to perform the review in the specified time results in any type of automatic determination or approval. Failure would simply constitute a breach of the stated regulatory duty and impose the continued obligation to perform the duty as quickly as possible.

VI. Compliance with Regulatory Review Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of the Regulatory Impact Analysis. This regulation is not major because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumer, individual industries, Federal, State or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, the impact of the proposed rule is not considered to be major.

These amendments were submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any response by the Agency are available for public inspection at the EPA Office of Drinking Water, 401 M Street, S.W., Washington, D.C. 20460.

B. Regulatory Flexibility Act

Today's regulations apply these requirements to new jurisdictions. However, the Agency's analysis indicates that this will not have a significant economic impact on a substantial number of small entities. All of the programs promulgated today were contemplated in the original economic analysis of the UIC program, and there has been no major change in the estimates of the burden of the program.

C. Paperwork Burden

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number *2040–0042.*

List of Subjects

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Indian lands.

40 CFR Part 144

Administrative practice and procedure, Reporting and recordkeeping requirements, Confidential business information, Water supply.

40 CFR Part 146

Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply.

40 CFR Part 147

Administrative practice and procedure, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply.

Authority: Safe Drinking Water Act, 42 U.S.C. 300h.

William D. Ruckelshaus,

Administrator.

For the reasons set out in the preamble, Parts 144 and 147 of Chapter I, Title 40 of the Code of Federal Regulations are amended as set forth below.

PART 144—[AMENDED]

Section 144.3 is amended by adding a definition for "Indian Lands" to follow the definition of HWM facility:

§ 144.3 Definition. -

* * * * *

Indian lands means "Indian country" as defined in 18 U.S.C. 1151. That section defines Indian country as:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAM

Subpart K—Florida

Subpart K is amended by adding §§ 147.501, 147.502, 147.503, and 147.504 as follows:

* * * * *

§ 147.501 EPA-administered program—Class II wells.

(a) *Contents.* The UIC program for Class II wells in the State of Florida is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Florida is: December 30, 1984.

§ 147.502 Aquifer Exemptions. [Reserved]

§ 147.503 Existing Class II (except enhanced recovery and hydrocarbon storage) wells authorized by rule.

Maximum injection pressure. To meet the operating requirements of § 144.28(f)(3)(i) of this chapter, the owner or operator shall use an injection pressure at the well head no greater than the pressure calculated using the following formula:

$$Pm = (0.733 - 0.433\ Sg)d$$

where

Pm = injection pressure at the well head in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

§147.504 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure. (1)* To meet the operating requirements of §144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment and opportunity for a public hearing, according to the provisions of Part 124, Subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at pressure greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of §144.28(f)(3)(ii) (A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of Part 124, Subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of §144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within 1 year of the effective date of this program.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) Comply with other requirements which the Regional Administrator may specify either in addition to or in lieu of the requirements set forth in paragraphs (b)(1)–(3) of this section as needed to protect USDWs.

(c) *Area of review.* Notwithstanding the alternatives presented in § 146.06 of this chapter, the area of review shall be a minimum fixed radius as described in § 146.06(b) of this chapter.

(The information collection requirements contained in paragraph (a)(2)(ii) were appoved by the Office of Management and Budget under control number 2040–0042)

Subpart M—Hawaii

2. Subpart M is amended by adding §§ 147.600 and 147.601.

§ 147.600 State-administered program. [Reserved]

§ 147.601 EPA-administered program.

(a) *Contents.* The UIC program for the State of Hawaii is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for the State of Hawaii is December 30, 1984.

Subpart R—Kansas

1. Subpart R is amended by revising § 147.850 to read as follows:

§ 147.850 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V wells in the State of Kansas, except those on Indian lands as described in § 147.860, is the program administered by the Kansas Department of Health and Environment, approved by EPA pursuant to Section 1422 of the SDWA. Notice of this approval was published in the **Federal Register** on December 2, 1983 (48 FR 54350); the effective date of this program is December 2, 1983. This program consists of the following elements, as submitted to EPA in the State's program application.

2. Subpart R is amended by revising § 147.851 to read as follows:

§ 147.851 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Kansas, except those on Indian lands as described in § 147.860, is the program administered by the Kansas

Corporation Commission and the Kansas Department of Health and Environment, approved by EPA pursuant to Section 1425 of the SDWA. Notice of this approval was published in the Federal Register on February 8, 1984 (49 FR 4735); the effective date of this program is February 8, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

3. Subpart R is amended by adding § 147.860.

§ 147.860 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Kansas is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Kansas is December 30, 1984.

Subpart Y—Minnesota

1. Subpart Y is amended by adding § 147.1210 as follows:

§ 147.1210 Requirements for Indian Lands.

(a) *Purpose and Scope.* This section sets forth additional requirements that apply to injection activities on Indian lands in Minnesota.

(b) *Requirements.* Notwithstanding the other requirements of this subpart, for Indian lands described in paragraph (a), no owner or operator shall construct, operate, maintain, or convert any Class I, II, III, or IV well. The UIC program for Class V wells on such Indian Lands is administered by EPA, and consists of the applicable requirements of 40 CFR Parts 124, 144, and 146. In addition, no owner or operator shall abandon a well without the approval of the Regional Administrator.

(c) *Effective date.* The effective date of the UIC program requirements for Indian lands in Minnesota is December 30, 1984.

Subpart Z—Mississippi

1. Subpart Z, is amended by adding §§ 147.1251, 147.1252, 147.1253, and 147.1254 as follows:

§ 147.1251 EPA-administered program—Class II wells.

(a) *Contents.* The UIC program for Class II wells in the State of Mississippi is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Class II wells in Mississippi is December 30, 1984.

§ 147.1252 Aquifer Exemptions. [Reserved]

§ 147.1253 Existing Class II (except enhanced recovery and hydrocarbon storage) wells authorized by rule.

Maximum injection pressure. To meet the operating requirements of § 144.28(f)(3)(i) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated using the following formula:

$$Pm = (0.733 - 0.433\ Sg)d$$

where

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

§ 147.1254 Existing Class II wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comments and opportunity for a public hearing, according to the provisions of Part 124, Subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at pressures greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of § 144.28(f)(3)(ii) (A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of Part 124, Subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of §§ 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within 1 year of the effective date of this program.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) Comply with other requirements which the Regional Administrator may specify either in addition to or in lieu of the requirements set forth in paragraphs (b) (1)–(3) of this section as needed to protect USDWs.

(c) *Area of review.* Notwithstanding the alternatives presented in § 146.06 of this chapter, the area of review shall be a minimum fixed radius as described in § 146.06(b) of this chapter.

(The information collection requirements contained in paragraph (a)(2)(ii) were approved by the Office of Management and Budget under control number 2040–0042.)

Subpart KK—Ohio

1. Subpart KK is amended by adding §§ 147.1801, 147.1802 and 147.1803 as follows:

* * * * *

§ 147.1801 EPA-administered program—Class I, III, IV, and V wells.

(a) *Contents.* The UIC program for Class I, III, IV, and V wells in the State of Ohio is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Class I, III, IV and V wells in Ohio is December 30, 1984.

§ 147.1802 Aquifer Exemptions.

[Reserved]

§ 147.1803 Existing Class I and III wells authorized by rule. Maximum injection pressure.

The owner or operator shall limit injection pressure to the lesser of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3)(i); or

(b) A value for well head pressure calculated by using the following formula:

$$Pm = (0.8—0.433\ Sg)\ d$$

where

Pm = injection pressure at the well head in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

Subpart QQ—South Dakota

1. Subpart QQ is amended by adding §§ 147.2100, 147.2101, 147.2102, 147.2103, and 147.2104 as follows:

§ 147.2100 State-administered program.

Class II wells [Reserved]

§ 147.2101 EPA-administered program.

(a) *Contents.* The UIC program for Class I, III, IV and V wells and Class II wells on Indian lands in the State of South Dakota is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for South Dakota is: December 30, 1984.

§ 147.2102 Aquifer exemptions.

(a) This section identifies any aquifers or their portions exempted in accordance with §§144.7(b) and 146.4 of this chapter at the time of program promulgation. EPA may in the future exempt other aquifers or their portions, according to applicable procedures, without codifying such exemptions in this section. An updated list of exemptions will be maintained in the Regional office.

(b) Those portions of all aquifers located on Indian Lands, which meet the definition of USDW and into which existing Class II wells are injecting, are exempted within a ¼ mile radius of the well for the purpose of Class II injection activities only.

§ 147.2103 Existing Class II enhanced recover and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comments, and opportunity for a public hearings, according to the provisions of Part 124, Subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) may inject at a pressure greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of § 144.28(f)(3)(ii)(A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of Part 124, Subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes field rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit to the Regional Administrator data acceptable to the Regional administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission.

(b) *Casing and Cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirement of §§ 144.28(e) and 146.22, the owner or operator shall when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operation pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone; and/or

(4) Comply with other requirements which the Regional Administrator may specify in addition to or in lieu of the requirements set forth in paragraph (b)(1)-(3) of this section as needed to protect USDWs.

(The information collection requirements contained in paragraph (a)(2)(ii) were approved by the Office of Management and Budget under control number 2040-0042)

§ 147.2104 Requirements for all Wells.

(a) The owner or operator converting an existing well to an injection well shall check the condition of the casing with one of the following logging tools:

(1) A pipe analysis log; or

(2) A caliper log.

(b) The owner or operator of a new injection well cased with plastic (PVC, ABS, or others) casings shall:

(1) Not construct a well deeper than 500 feet;

(2) Use cement and additives compatible with such casing material; and

(3) Cement the annular space above the injection intermal from the bottom of the blank casing to the surface.

(c) The owner or operator of a newly drilled well shall install centralizers as directed by the Regional Administrator.

(d) The owner or operator shall as required by the Regional Administrator:

(1) Protect USDWs by:

(i) Setting surface casing 50 feet below the lowermost USDW;

(ii) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(iii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure; and

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may approve alternate casing and cementing practices provided that the owner or operator demonstrates that such practices will adequately protect USDWs.

(e) *Area of review.* Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review shall be a fixed radius as described in § 146.6(b) of this chapter.

(f) The applicant must give separate notice of intent to apply for a permit to each owner of record of the land within one-quarter mile of the site. The addresses of those to whom notice is given and the description of how notice was given shall be submitted with the permit application. The notice shall include:

(1) The name and address of applicant;

(2) A brief description of the planned injection activities, including well location, name and depth of the injection zone, maximum injection pressure and volume, and fluid to be injected;

(3) The EPA contact person; and

(4) A statement that opportunity to comment will be announced after EPA prepares a draft permit.

This requirement may be waived by the Regional Administrator if he determines that individual notice to all land owners of record would be impractical.

Subpart YY—Wisconsin

1. Subpart YY is amended by revising § 147.2500 to read as follows:

§ 147.2500 State-administered program.

The UIC program for Class I, II, III, IV, and V wells in the State of Wisconsin, other than those on Indian lands as described in § 147.2510, is the program administered by the Wisconsin Department of Natural Resources, approved by EPA pursuant to SDWA Section 1422. Notice of this approval was published in the **Federal Register** on September 30, 1983 (48 FR 44783); the effective date of this program is November 30, 1983. This program consists of a prohibition of all injection wells except heat pump return flow injection wells and may be found in the following elements, as submitted to EPA in the State's program application.

2. Subpart YY is amended by adding § 147.2510.

§ 147.2510 EPA-administered program—Indian lands

(a) *Contents.* The UIC program for Indian lands in the State of Wisconsin is administered by EPA. This program consists of 40 CFR Parts 144 and 146 and additional requirements set forth in this section. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Requirements.* Notwithstanding the requirements of paragraph (a) of this section for Indian lands in Wisconsin no owner or operator shall construct, operate, maintain, or convert any Class I, II, III, IV or V injection well.

(c) *Effective date.* The effective date of the UIC program requirements for Indian lands in Wisconsin is December 30, 1984.

Subpart BBB—Puerto Rico

1. Subpart BBB is amended by adding §§ 147.2650 and 147.2651 as follows:

§ 147.2650 State-administered program. [Reserved]

§ 147.2651 EPA-administered program.

(a) *Contents.* The UIC program for Puerto Rico is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Puerto Rico is: December 30, 1984.

Subpart CCC—Virgin Islands

1. Subpart CCC is amended by adding §§ 147.2700 and 147.2701.

§ 147.2700 State-administered program. [Reserved]

§ 147.2701 EPA-administered program.

(a) *Contents.* The UIC program for the Virgin Islands is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for the Virgin Islands is: December 30, 1984.

Subpart LL—Oklahoma

1. Subpart LL is amended by adding § 147.1852 as follows:

§ 147.1852 EPA-administered program—Osage Mineral Reserve—Class II wells.

The UIC program for Class II wells located within the Indian lands consisting of the Osage Mineral Reserve, Osage County, Oklahoma, is administered by EPA. This program consists of the requirements set forth at Subpart GGG of this Part.

2. 40 CFR Part 147 is amended by adding Subpart GGG.

Subpart GGG—Osage Mineral Reserve—Class II Wells

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147.2925 Standard permit conditions.
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Authority: Safe Drinking Water Act, 42 U.S.C. 300h.

Subpart GGG—Osage Mineral Reserve—Class II Wells

§ 147.2901 Applicability and scope.

This subpart sets forth the rules and permitting requirements for the Osage Mineral Reserve, Osage County, Oklahoma, Underground Injection Control Program. The regulations apply to owners and operators of Class II injection wells located on the Reserve, and to EPA.

§ 147.2902 Definitions.

Most of the following terms are defined in § 144.3, and have simply been reproduced here for the convenience of the reader. This section also includes definitions of some terms unique to the Osage program. Terms used in this subpart are defined as follows:

Administrator—the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Aquifer—a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

BIA—The "Bureau of Indian Affairs," United States Department of Interior.

Casing—a pipe or tubing of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and, thus, prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering the hole.

Cementing—the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

Class II Wells—wells which inject fluids:

(a) which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters would be classified as a hazardous waste at the time of injection;

(b) for enhanced recovery of oil or natural gas; and

(c) for storage of hydrocarbons which are liquid at standard temperature and pressure.

Existing Class II Wells—wells that were authorized by BIA and constructed and completed before the effective date of this program.

New Class II Wells—wells constructed or converted after the effective date of this program, or which are under construction on the effective date of this program.

Confining bed—a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

Confining zone—a geologic formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

Contaminant—any physical, chemical, biological, or radiological substance or matter in water.

Disposal well—a well used for the disposal of waste into a subsurface stratum.

EPA—The United States Environmental Protection Agency.

Fault—a surface or zone of rock fracture along which there has been displacement.

Fluid—material or substance which moves or flows whether in a semisolid, liquid, sludge, gas or any other form or state.

Formation—a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

Freshwater—"Underground source of drinking water."

Ground water—water below the land surface in a zone of saturation.

Injection well—a well into which fluids are being injected.

Injection zone—a geological formation, group of formations, or part of a formation receiving fluids through a well.

Lithology—the description of rocks on the basis of their physical and chemical characteristics.

Owner/operator—the owner or operator of any facility or activity subject to regulation under the Osage UIC program.

Packer—a device lowered into a well to produce a fluid-tight seal within the casing.

Permit—an authorization issued by EPA to implement UIC program requirements. Permit does not include the UIC authorization by rule or any permit which has not yet been the subject of final Agency action.

Plugging—the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.

Pressure—the total load or force per unit area acting on a surface.

Regional Administrator—the Regional Administrator of Region 6 of the United States Environmental Protection Agency, or an authorized representative.

Subsidence—the lowering of the natural land surface in response to: earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution solids, either artificially or from natural causes; compaction due to wetting (hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

Underground Source of Drinking Water—an aquifer or its portion:

(a) (1) which supplies any public water system; or

(2) which contains a sufficient quantity of ground water to supply a public water system; and

(i) currently supplies drinking water for human consumption; or

(ii) contains fewer than 10,000 mg/1 total dissolved solids; and

(b) which is not an exempted aqulfer.

USDW—Underground Source of Drinking Water.

Well—a bored, drilled, or driven shaft, or a dug hole whose depth is greater than the largest surface dimension.

Well Injection—the subsurfac emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

Well Workover—any reentry of an injection well; including, but not limited to, the pulling of tubular goods, cementing or casing repairs; and excluding any routine maintenance (e.g. re-seating the packer at the same depth, or repairs to surface equipment).

§ 147.2903 Prohibition of unauthorized injection.

(a) Any underground injection, except as authorized by permit or rule issued under the UIC program, is prohibited. The construction or operation of any well required to have a permit is prohibited until the permit has been issued.

(b) No owner or operator shall construct, operate, maintain, convert, plug, or abandon any injection well, or conduct any other injection activity, in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause the violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

(c) Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.

§ 147.2904 Area of review.

(a) The area of review for an injection well or project will be a fixed radius of one-forth of a mile from the well, field or project.

(b) The zone of endangering influence is the lateral area around the injection well or project in which the injection zone pressures may cause movement of fluid into an underground source of drinking water (USDW) if there are improperly sealed, completed or abandoned wells present. A zone of endangering influence may be determined by EPA through the use of an appropriate formula that addresses the relevant geologic, hydrologic, engineering and operational features of the well, field, or project.

§ 147.2905 Plugging and abandonment.

The owner/operator shall notify the Osage UIC office within 30 days of the date injection has terminated. The well must be plugged within 1 year after termination of injection. The Regional Administrator may extend the time to plug, but only if no fluid movement into a USDW will occur, and the operator has presented a viable plan for utilizing the well within a reasonable time.

(a) Until an injection well has been properly plugged and abandoned, annual reports to the Regional Administrator on well status, and mechanical integrity tests as outlined in §§ 147.2912 and 147.2920 will be required, whether or not injection has ceased.

(b) All wells shall be plugged to prevent movement of fluid into an USDW.

(c) The owner/operator shall notify the Osage UIC office by certified mail at least 5 days prior to the commencement of plugging operations. The Osage UIC office may waive or reduce the 5-day notice requirement when a qualified EPA representative is available to witness the plugging operation. The following information must be submitted as part of the notification:

(1) Type and number of plugs to be used;

(2) Elevation of top and bottom of each plug;

(3) Method of plug placement; and

(4) Type, grade and quantity of cement to be used.

(d) The well shall be kept full of mud as casing is removed. No surface casing shall be removed without written approval from the Regional Administrator.

(e)(1) If surface casing is adequately set and cemented through all freshwater zones (set to at least 50 feet below the base of freshwater), a plug shall be set at least 50 feet below the shoe of the casing and extending at least 50 feet above the shoe of the casing, or

(2) If the surface casing and cementing is inadequate, the well bore shall be filled with cement from a point 50 feet below the base of fresh water to a point 50 feet above the shoe of the surface casing, and any additional plugs as required by the Osage UIC office and/or the Osage Agency.

(3) In all cases, the top 20 feet of the well bore below 3 feet of ground surface shall be filled with cement. Surface casing shall be cut off 3 feet below ground surface and covered with a secure steel cap on top of the surface pipe. The remaining 3 feet shall be filled with dirt.

(f)(1) Except as provided in paragraph (f)(2) of this section, each producing or receiving formation shall be sealed off with a 50-foot cement plug placed at the base of the formation and a 50–foot cement plug placed at the top of the formation.

(2) The requirement in paragraph (f)(1) of this section does not apply if the producing/receiving formation is already sealed off from the well bore with adequate casing and cementing behind casing, and casing is not to be removed, or the only openings from the producing/receiving formation into the well bore are perforations in the casing, and the annulus between the casing and the outer walls of the well is filled with cement for a distance of 50 feet below the base of the formation and 50 feet above the top of the formation. When such conditions exist, a bridge plug capped with 10 feet of cement set at the top of the producing formation may be used.

(g) When specified by the Osage UIC office, any uncased hole below the shoe of any casing to be left in the well shall be filled with cement to a depth of at least 50 feet below the casing shoe, or the bottom of the hole, and the casing above the shoe shall be filled with cement to at least 50 feet above the shoe of the casing. If the well has a screen or liner which is not to be removed, the well bore shall be filled with cement from the base of the screen or liner to at least 50 feet above the top of the screen or liner.

(h) All intervals between cement plugs in the well bore shall be filled with mud.

(i) A report containing copies of the cementing tickets shall be submitted to BIA within 10 days of plugging completion.

(j) A surety bond must be on file with the Bureau of Indian Affairs (BIA), and shall not be released until the well has been properly plugged and the Regional Administratior has agreed to the release of the bond.

§ 147.2906 Emergency permits.

(a) An emergency permit may be issued if:

(1) There will be an imminent health hazard unless an emergency permit is issued; or

(2) There will be a substantial and irretrievable loss of oil and gas resources, timely application for a permit could not practicably have been made, and injection will not result in movement of fluid into an USDW; or

(3) There will be a substantial delay in oil or gas production, and injection will not result in movement of fluid into an USDW.

(b) *Requirements.*—(1) *Permit duration.* (i) Emergency permits issued to avoid an imminent health threat may last no longer than the time necessary to prevent the hazard.

(ii) Emergency permits issued to prevent a substantial and irretrievable loss of oil or gas resources shall be for no longer than 90 days, unless a complete permit application has been submitted during that time; in which case the emergency permit may be extended until a final decision on the permit application has been made.

(iii) Emergency permits to avoid a substantial delay in oil or gas production shall be issued only after a complete permit application has been submitted and shall be effective until a final decision on the permit applicaiton is made.

(2) Notice of the emergency permit will be given by the Regional Administrator according to the notice procedure for a draft permit within 10 days after issuance.

(3) An emergency permit may be oral or written. If oral, a written emergency permit must be issued within five calendar days.

§ 147.2907 Confidentiality of information.

(a) The following information cannot be claimed confidential by the submitter:

(1) Name and address of permit applicant or permittee.

(2) Information concerning the existence, absence or level of contaminants in drinking water.

(b) Other information claimed as confidential will be processed in accordance with 40 CFR Part 2.

§ 147.2908 Aquifer exemptions.

(a) After notice and opportunity for a public hearing, the Administrator may designate any aquifer or part of an aquifer as an exempted aquifer.

(b) An aquifer or its portion that meets the definition of a USDW may be exempted by EPA from USDW status if the following conditions are met:

(1) it does not currently serve as a source of drinking water, and

(2) it cannot now and will not in the future serve as a source of drinking water because:

(i) it is hydrocarbon producing, or can be demonstrated by a permit applicant as a part of a permit application for a Class II operation to contain hydrocarbons that are expected to be commercially producible (based on historical production or geologic information); or

(ii) it is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or

(iii) it is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or

(3) the Total Dissolved Solids content of the groundwater is more than 3,000 and less than 10,000 mg/1 and it is not reasonably expected to supply a public water system.

§ 147.2909 Authorization of existing wells by rule.

All existing Class II injection wells (wells authorized by BIA and constructed or completed on or before the effective date of the Osage UIC program) are hereby authorized. Owners or operators of wells authorized by rule must comply with the provisions of §§ 147.2903, 147.2905, 147.2907, and 147.2910 through 147.2915.

§ 147.2910 Duration of authorization by rule.

Existing Class II injuction wells are authorized for the life of the well, subject to the obligation to obtain a permit if specifically required by the Regional Administrator pursuant to §147.2915.

§ 147.2911 Construction requirements for wells authorized by rule.

All Class II wells shall be cased and cemented to prevent movement of fluids into USDWs. The Regional Administrator shall review inventory information, data submitted in permit applications, and other records, to determine the adequacy of construction (completion) or existing injection wells. At the Regional Administrator's discretion, well casing and cementing may be considered adequate if it meets the BIA requirements that were in effect at the time of construction (completion) and will not result in movement of fluid into an USDW. If the Regional Administrator determines that the construction of a well authorized by rule is inadequate, he shall require a permit, or he shall notify the owner/operator and the owner/operator shall correct the problem according to instructions from the Regional Administrator. All corrections must be completed within one year of owner/operator notification of inadequacies.

§ 147.2912 Operating requirements for wells authorized by rule.

(a) Each well authorized by rule must have mechanical integrity. Mechanical integrity must be demonstrated within five years of program adoption. The Regional Administrator will notify the well owner/operator three months before proof of mechanical integrity must be submitted to EPA. The owner/operator must contact the Osage UIC office at least five days prior to testing. The owner/operator may perform the mechanical integrity test prior to receiving notice from the Regional Administrator, provided the Osage UIC office is notified at least five days in advance. Conditions of both paragraphs (a)(1) and (a)(2) of this section must be met.

(1) There is no significant leak in the casing, tubing or packer. This may be shown by the following:

(i) Performance of a pressure test of the casing/tubing annulus to at least 200 psi, or the pressure specified by the Regional Administrator, to be repeated thereafter, at five year intervals, for the life of the well (pressure tests conducted during well operation shall maintain an injection/annulus pressure differential of at least 100 psi through the tubing length); or

(ii) Maintaining a positive gauge pressure on the casing/tubing annulus (filled with liquid) and monitoring the pressure monthly and reporting of the pressure information annually; or

(iii) Radioactive tracer survey; or

(iv) for enhanced recovery wells, records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate at the well head, following an initial pressure test as described by Paragraph (a)(1)(i) or (v) of this section; or

(v) Testing or monitoring programs approved by the Regional Administrator on a case-by-case basis, and

(2) There is no significant fluid movement into a USDW through vertical channels adjacent to the well bore. This may be shown by any of the following:

(i) Cementing records (need not be reviewed every five years);

(ii) Tracer survey (in appropriate hydrogeologic settings; must be used in conjunction with at least one of the other alternatives);

(iiii) Temperature log;

(iv) Noise log; or

(v) Other tests deemed acceptable by the Regional Administrator.

(b) Injection pressure at the wellhead shall be limited so that it does not initiate new fractures or propagate existing fractures in the confining zone adjacent to any UDSW.

(1) For existing Class II salt water disposal wells, The owner/operator shall, except during well stimulation, use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$$Pm = (0.75 - 0.433Sg)d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch

Sg = specific gravity of injected fluid (unitless)

d = injection depth in feet

Owner/operator of wells shall comply with the above injection pressure limits no later than one year after the effective date of this regulation.

(2) For existing Class II enhanced recovery wells, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment, and opportunity for a public hearing according to the provisions of Part 124, Subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure.

(ii) Prior to such time as the Regional Administrator establishes rules for maximum injection pressures based on data provided pursuant to paragraph (b)(2)(ii)(B) of this section the owner/operator shall:

(A) Limit injection pressure at the wellhead to a value which will not initiate new fractures or propagate existing fractures in the confining zone adjacent to any USDW; and

(B) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations

in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within one year of the effective date of this program.

(c) Injection wells or projects which have exhibited failure to confine injected fluids to the authorized injection zone or zones may be subject to restriction of injection volume and pressure, or shut-down, until the failure has been identified and corrected.

(The information collection requirements contained in paragraphs (a)(i) (ii)–(v) and (a)(2) (i)–(v) were approved by the Office of Management and Budget under control number 2040.0042)

§ 147.2913 Monitoring and reporting requirements for wells authorized by rule.

(a) The owner/operator has the duty to submit inventory information to the Regional Administrator upon request. Such request may be a general request to all operators in the County (e.g., public notice, or mailout requesting verification of information).

(b) The operator shall monitor the injection pressure (psi) and rate (bb1/day) at least monthly, with the results reported annually. The annual report shall specify the types of methods used to generate the monitoring data.

(c) The owner/operator shall notify the Osage UIC office within 30 days of any mechanical failure or down-hole problems involving well integrity, well workovers, or any noncompliance. As required, operators must apply for and obtain a workover permit from the Bureau of Indian Affairs Osage Agency before reentering an injection well. If the condition may endanger an USDW, the owner/operator shall notify the Osage UIC office orally within 24 hours, with written notice including plans for testing and/or repair to be submitted within five days. If all the information is not available within five days, a followup report must be submitted with 30 days.

(d) The owner/operator shall determine the nature of injected fluids initially, when the nature of injected fluids is changed or when new constituents are added. The records should reflect the source of character of the new fluid and the date changes were made.

(e) The owner/operator shall retain all monitoring records for three years, unless an enforcement action is pending, and then until three years after the enforcement action has been resolved.

(Approved by the Office of Management and Budget under control number 2040–0042)

§ 147.2914 Corrective action for wells authorized by rule.

Based on the Regional Administrator's discretion, corrective action to prevent movement of fluid into a USDW may be required for improperly sealed, completed or abandoned wells (i.e., wells or well bores which may provide and avenue for fluid migration into a USDW) within the zone of endangering influence (as defined in 147.2904, Area of Review) of an injection well authorized by rule.

(a) EPA will notify the operator when corrective action is required. Corrective action may include:

(1) Well modifications:

(i) Recementing;

(ii) Workover;

(iii) Reconditioning;

(iv) Plugging or replugging;

(2) Limitations on injection pressure to prevent movement of fluid into an USDW;

(3) A more stringent monitoring program; and/or

(4) Periodic testing of other wells to determine if significant movement of fluid has occurred.

(b) If the monitoring discussed in paragraphs (a)(3) or (a)(4) of this section indicate the potential endangerment of an USDW, then action as described in paragraphs (a)(1) or (a)(2) of this section must be taken.

§ 147.2915 Requiring a permit of wells authorized by rule.

(a) The Regional Administrator may require the owner or operator of any well authorized by rule to apply for an individual or area permit. The Regional Administrator shall notify the owner/operator in writing that a permit application is required. The notice shall contain:

(1) Explanation of need for application;

(2) Application form and, if appropriate, a list of additional information to be submitted; and

(3) Deadline for application submission.

(b) Cases in which the Regional Administrator may require a permit include:

(1) The owner or operator is not in compliance with provisions of the rule;

(2) Injection well is no longer within the category of wells authorized by rule;

(3) Protection of USDW's requires that the injection operation be regulated by requirements which are not contained in the rule; or

(4) Discretion of Regional Administrator.

(c) Injection is no longer authorized by rule upon the effective date of a permit or permit denial, or upon failure of the owner/operator to submit an application in a timely manner as specified in the notice described in paragraph (a) of this section.

(d) Any owner/operator authorized by rule may request to be excluded from the coverage of the rules by applying for an individual or area UIC permit.

§ 147.2916 Coverage of permitting requirements.

The owner or operator of a new Class II injection well or any other Class II well required to have a permit in the Osage Mineral Reserve shall comply with the requirements of §§ 147.2903, 147.2907, 147.2918, through 147.2928.

§ 147.2917 Duration of permits.

Unless otherwise specified in the permit, the permits will be in effect until the well is plugged and abandoned or the permit terminated. The Regional Administrator will review each issued permit at least once every five years to determine whether it should be modified or terminated.

§ 147.2918 Permit application information.

(a) The owner/operator must submit the original and three copies of the permit application, with two complete sets of attachments, to the Osage UIC office. The application should be signed by the owner/operator or a duly authorized representative. The application should also include appropriate forms (i.e., BIA's Application for Operation or Report on Wells and EPA's permit application). The applicant has the burden of proof to show that the proposed injection activities will not endanger USDWs.

(b) The application shall include the information listed below. Information required by paragraphs (b) (5), (7), or (9) of this section that is contained in EPA or BIA files may be included in the application by reference.

(1) Map using township-range sections showing the area of review and identifying all wells of public record penetrating the injection interval.

(2) Tabulation of data on the wells identified in paragraph (b)(1) of this section, including location, depth, date drilled, and record of plugging and/or completion.

(3) Operating data:

(i) maximum and average injection rate;

(ii) maximum and average injection pressure;

(iii) whether operation is on cyclic or continuous operation basis; and

(iv) source and appropriate analysis of injected fluids, including total dissolved solids, chlorides, and additives.

(4) Geologic data on the injection and confining zones, including faults, geological name, thickness permeability, depth and lithologic description.

(5) Depth to base of fresh water.

(6) Schematic drawings of the surface and subsurface details of the well, showing:

(i) Total depth or plug-back depth;

(ii) Depth to top and bottom of injection interval;

(iii) Depths to tops and bottoms of casing and cemented intervals, and amount of cement to be used;

(iv) Size of casing and tubing, and depth of packer; and

(v) Hole diameter.

(7) Proof that surety bond has been filed with the BIA Superintendent in accordance with 25 CFR § 226.6. A surety bond must be maintained until the well has been properly plugged.

(8) Vertification of public notice, consisting of a list showing the names, addresses, and date that notice of permit application was given or sent to:

(i) the surface land owner;

(ii) tenants on land where injection well is located or proposed to be located; and

(iii) Each operator of a producing lease within one-half mile of the well location.

(9) All available logging and testing data on the well (for existing wells, i.e., wells to be converted or wells previously authorized by rule).

(Approved by the Office of Management and Budget under control number 2040–0042)

§ 147.2919 Construction requirements for wells authorized by permit.

(a) All Class II wells shall be sited so that they inject into a formation that is separated from any USDW by a confining zone free of known open faults or fractures within the area of review.

(b) All Class II wells shall be cased and cemented to prevent movement of fluids into or between USDWs. Requirements shall be based on the depth to base of fresh water, and the depth to the injection zone. Newly drilled Class II wells must have surface casing set and cemented to at least 50 feet below the base of fresh water, or the equivalent (e.g., long string cemented to surface). At the Regional Administrator's discretion, the casing and cementing of wells to be converted may be considered adequate if they meet the BIA requirements that were in effect at the time of construction (completion), and will not result in movement of fluid into a USDW.

(c) Owner/operators shall provide a standard female fitting with cut-off valves, connected to the tubing and the tubing/casing annulus so that the injection pressure and annulus pressure may be measured by an EPA representative by attaching a gauge having a standard male fitting.

(d) No owner or operator may begin construction of a new well until a permit authorizing such construction has been issued, unless such construction is otherwise authorized by an area permit.

§ 147.2920 Operating requirements for wells authorized by permit.

(a) For new Class II wells, injection shall be through adequate tubing and packer. Packer shall be run on the tubing and set inside the casing within 75 feet of the top of the injection interval. For existing Class II, wells, injection shall be through adequate tubing and packer, or according to alternative operating requirements approved by the Regional Administrator, as necessary to prevent the movement of fluid into a USDW.

(b) Each well must have mechanical integrity. Mechanical integrity of the injection well must be shown prior to operation. The owner/operator must notify the Osage UIC office at least five days prior to mechanical integrity testing. Conditions of both Paragraphs (b)(1) and (b)(2) of this Section must be met.

(1) There is no significant leak in the casing, tubing or packer. This may be shown by the following:

(i) Performance of a pressure test of the casing/tubing annulus to at least 200 psi, or the pressure specified by the Regional Administrator, to be repeated thereafter, at five year intervals, for the life of the well (Pressure tests conducted during well operation shall maintain an injection/annulus pressure differential of at least 100 psi throughout the tubing length); or

(ii) Maintaining a positive gauge pressure on the casing/tubing annulus (filled with liquid) and monitoring the pressure monthly and reporting of the pressure information annually; or

(iii) Radioactive tracer survey; or

(iv) For enhanced recovery wells, record of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate at the wellhead, following an initial pressure test as described by Paragraph (b)(1) (i) or (v) of this section; or

(v) Testing or monitoring programs approved by the Administrator on a case-by-case basis, and

(2) There is no significant fluid movement into a USDW through vertical channels adjacent to the well bore. This may be shown by any of the following:

(i) Cementing records (need not be reviewed every five years);

(ii) Tracer survey (in appropriate hydrogelogic settings; must be used in conjunction with at least one of the other alternatives);

(iii) Temperature log;

(iv) Noise log; or

(v) Other tests deemed acceptable by the Administrator.

(c) Injection pressure at the wellhead shall be limited so that it does not initiate new fractures or propagate existing fractures in the confining zone adjacent to any UDSW.

(d) Injection wells or projects which have exhibited failure to confine injected fluids to the authorized injection zone or zones may be subject to restriction of injected volume and pressure or shut-in, until the failure has been identified and corrected.

(e) Operation shall not commence until proof has been submitted to the Regional Administrator, or an EPA representative has witnessed that any corrective action specified in the permit has been completed.

§ 147.2921 Schedule of compliance.

The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Safe Drinking Water Act and the Osage UIC regulations.

(a) Any schedule of compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.

(b) If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(1) The time between interim dates shall not exceed one year.

(2) If the time necessary for completion of any interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(c) The permit shall be written to require that if a schedule of compliance is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

§ 147.2922 Monitoring and reporting requirements for wells authorized by permit.

(a) The owner/operator shall notify the Osage UIC office within 30 days of the date on which injection commenced.

(b) The operator shall monitor the injection pressure (psi) and rate (bbl/day) at least monthly, with the results reported annually. The annual reports shall specify the types or methods used to generate the monitoring data.

(c) The owner/operator shall notify the Osage UIC office within 30 days of any mechanical failure or down-hole problems involving well integrity, well workovers, or any noncompliance. (Operators should note the obligation to apply for and obtain a workover permit from the Bureau of Indian Affairs Osage Agency before reentering an injection well.) If the condition may endanger an USDW, the owner/operator shall notify the Osage UIC officer orally within 24 hours, with written notice including plans for testing and/or repair to be submitted within five days. If all the information is not available within five days, a followup report must be submitted within 30 days.

(d) The owner/operator shall retain all monitoring records for three years, unless an enforcement action is pending, and then until three years after the enforcement action has been resolved.

(e) The owner/operator shall notify the Osage UIC office in writing of a transfer of ownership at least 10 days prior to such transfer.

(Approved by the Office of Management and Budget under Control Number 2040–0042)

§ 147.2923 Corrective action for wells authorized by permit.

All improperly sealed, completed or abandoned wells (i.e., wells or well bores which may provide an avenue for movement of fluid into an UDSW) within the zone of endangering influence (as defined in § 147.2904, Area of Review) that penetrate the injection zone of a Class II well, must have corrective action taken to prevent movement of fluid into a USDW.

(a) EPA will review completion and plugging records of wells within the zone of endangering influence that penetrate the injection zone and will notify the operator when corrective action is required. Corrective action may include:

(1) Well modifications, including:

(i) Recementing;

(ii) Workover;

(iii) Reconditioning; and/or

(iv) Plugging or replugging;

(2) Permit conditions to limit injection pressure so as to prevent movement of fluid into a USDW;

(3) A more stringent monitoring program; and/or

(4) Periodic testing of other wells within the area of review to determine if significant movement of fluid has occurred. If the monitoring discussed in paragraph (a)(3) or (a)(4) of this section indicates the potential endangerment of a USDW, then action as described in paragraphs (a)(1) or (a)(2) of this section must be taken.

(b) If the Regional Administrator has demonstrable knowledge that wells within the zone of endangering influence will not serve as conduits for fluid movement into a USDW, the permit may be approved without requiring corrective action. However, additional monitoring shall be required to confirm that no significant migration will occur.

§ 147.2924 Area permits.

(a) Area permits may be issued for more than one injection well if the following conditions are met:

(1) All existing wells are described and located in the permit application;

(2) All wells are within the same well field, project, reservoir or similar unit;

(3) All wells are of similar construction; and

(4) All wells are operated by the same owner/operator.

(b) Area permits shall specify:

(1) The area within which injection is authorized; and

(2) The requirements for construction, monitoring, reporting, operation and abandonment for all wells authorized by the permit.

(c) Area permits can authorize the construction and operation of new wells within the permit area, if:

(1) The permittee notifies the Regional Administrator in the annual report of when and where any new wells have or will be drilled;

(2) The new wells meet the criteria outlined in (a) and (b) above; and

(3) The effects of the new wells were addressed in the permit application and approved by the Regional Administrator.

(The information collection requirements contained in paragraphs (a)(1) and (c)(1) were approved by the Office of Management and Budget under control number 2040–0042)

§ 147.2925 Standard permit conditions.

(a) The permittee must comply with all permit conditions, except as authorized by an emergency permit (described in § 147.2906). Noncompliance is grounds for permit modification, permit termination or enforcement action.

(b) The permittee has a duty to halt or reduce activity in order to maintain compliance with permit conditions.

(c) The permittee shall take all reasonable steps to mitigate any adverse environmental impact resulting from noncompliance.

(d) The permittee shall properly operate and maintain all facilities installed or used to meet permit conditions. Proper operation and maintenance also includes adequate operator staffing and training, adequate funding, and adequate engineering capability available.

(e) This permit may be modified or terminated for cause (see §§ 147.2927 and 147.2928). The filing of a request by the permittee for a permit modification or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(f) This permit does not convey any property rights, or any exclusive privilege.

(g) The permittee shall furnish, within a reasonable time, information that the Regional Administrator requests, for determination of permit compliance, or if cause exists, for permit modification or termination.

(h) The permittee shall allow EPA representatives, upon presentation of appropriate credentials or other documentation, to:

(1) Enter permittee's premises where a regulated activity is conducted or located, or where records required by this permit are kept;

(2) Have access to and copy records required by this permit;

(3) Inspect any facilities, equipment, practices or operations regulated or required by this permit; and

(4) Sample or monitor any substances or parameters at any location for purpose of assuring compliance with this permit or the SDWA.

(i) Monitoring and records.

(1) Samples and monitoring data shall be representative of injection activity.

(2) Permittee shall retain monitoring records for three years.

(3) Monitoring records shall include:

(i) Date, exact place and time of sampling or measurement;

(ii) Individual(s) who preformed the measurements;

(iii) Date(s) analyses were performed;

(iv) Individual(s) who performed the analyses;

(v) Analytical techniques or methods used, including quality assurance techniques employed to insure the generation of reliable data; and

(vi) Results of analyses.

(j) *Signatory requirements.* All applications, reports or information submitted to the Regional Administrator or the Osage UIC office must be signed by the injection facility owner/operator or his duly authorized representative. The person signing these documents must make the following certification:

"I certify under penalty of law that I have personally examined and am

familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(k) *Reporting requirements.* (1) The permittee shall notify the Regional Administrator as soon as possible of any planned changes to the facility.

(2) The permittee shall give advance notice to the Regional Administrator of any planned changes which may result in noncompliance.

(3) This permit is not transferable to any person except after notice to the Regional Administrator in accordance with § 147.2926.

(l) A new injection well shall not commence injection until construction is complete and the Regional Administrator has been notified of completion of construction and has given his approval to commence injection.

(The information collection requirements contained in paragraphs (g) and (i) were approved by the Office of Management and Budget under control number 2040–0042)

§ 147.2926 Permit transfers.

(a) Permits may be transferred to another permittee:

(1) If the current permittee notifies the Regional Administrator at least 10 days before the proposed transfer date; and

(2) If the notice includes a written agreement between the existing and new permittees containing:

(i) A specific date for transfer of permit responsibility, coverage and liability; and

(ii) Assurance that the new permittee has a surety bond on file with BIA; and

(3) If the Regional Administrator does not respond with a notice to the existing permittee that the permit will be modified.

(b) If the conditions in paragraph (a) of this section are met, the transfer is effective on the date specified in paragraph (a)(2)(i).

(Approved by the Office of Management and Budget under control number 2040–0042)

§ 147.2927 Permit modification.

(a) Permits may be modified for the following causes only (with the exceptions listed in paragraph (b) of this section regarding minor modifications):

(1) There are substantial changes to the facility or activity which occurred after permit issuance that justify revised or additional permit conditions.

(2) The Regional Administrator has received information (e.g., from monitoring reports, inspections) which warrants a modified permit.

(3) The regulations or standards on which the permit was based have changed.

(4) The Regional Administrator has received notice of a proposed permit transfer.

(5) An interested person requests in writing that a permit be modified, and the Regional Administrator determines that cause for modification exists.

(6) Cause exists for termination under § 147.2928, but the Regional Administrator determines that permit modification is appropriate.

(b) *Minor modifications.*

(1) Minor modifications do not require that the procedures listed in paragraph (c) of this section be followed.

(2) Minor modifications consist of:

(i) correcting typographical errors;

(ii) requiring more frequent monitoring or reporting;

(iii) changing ownership or operational control (see § 147.2926, Permit Transfers); or

(iv) changing quantities or types of injected fluids, provided:

(A) The facility can operate within conditions of permit;

(B) The facility classification would not change.

(c) Modification procedures.

(1) A draft permit shall be prepared with proposed modifications.

(2) The draft permit shall follow the general permitting procedures (i.e., public comment period, etc.) before a final decision is made.

(3) Only the changed conditions shall be addressed in the draft permit or public review.

§ 147.2928 Permit termination.

(a) Permits may be terminated for the following causes only:

(1) Noncompliance with any permit condition.

(2) Misrepresentation or failure to fully disclose any relevant facts.

(3) Determination that the permitted activity endangers human health or the environment.

(4) Interested person requests in writing that a permit be terminated and the Regional Administrator determines that request is valid.

(b) *Termination procedures.* (1) The Regional Administrator shall issue notice of intent to terminate (which is a type of draft permit).

(2) Notice of intent to terminate shall follow the general permitting procedures (i.e., public comment period, etc.) before a final decision is made.

§ 147.2929 Administrative permitting procedures.

(a) *Completeness review.* (1) The Regional Administrator shall review each permit application for completeness with the application requirements in § 147.2918. The review will be completed in 10 days, and the Regional Administrator shall notify the applicant whether or not the application is complete.

(2) If the application is incomplete, the Regional Administrator shall:

(i) List the additional information needed;

(ii) Specify a date by which the information must be submitted; and

(iii) Notify the applicant when the application is complete.

(3) After an application is determined complete, the Regional Administrator may request additional information to clarify previously submitted information. The application will still be considered complete.

(4) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions taken.

(b) *Draft permits.* (1) After an application is deemed complete, the Regional Administrator shall either prepare a draft permit or notice of intent to deny the permit (which is a type of draft permit). If the Regional Administrator later decides the tentative decision to deny was wrong, he shall withdraw the notice of intent to deny and prepare a draft permit.

(2) A draft permit shall contain at least the following information:

(i) the standard permit conditions in § 147.2925;

(ii) any monitoring and reporting requirements;

(iii) the construction and operation requirements; and

(iv) plugging and abandonment requirements.

(c) *Statement of basis.* (1) The Regional Administrator shall prepare a statement of basis for every draft permit.

(2) The statement of basis shall briefly describe the draft permit conditions and the reasons for them. In the case of a notice of intent to deny or terminate, the statement of basis shall give reasons to support the tentative decision.

(3) The statement of basis shall be sent to the applicant, and to any other person who requests a copy.

(d) *Public notice.* (1)(i) The Regional Administrator shall give public notice when:

(A) a permit application has been tentatively denied;

(B) a draft permit has been prepared;

(C) a hearing has been scheduled; or

(D) an appeal has been granted.

(ii) The applicant shall give public notice that he is submitting a permit application.

(iii) Public notice is not required when a request for permit modification or termination is denied. However, written notice will be given to the permittee and the requester.

(iv) Public notices may include more than one permit or action.

(2)(i) Public notice of a draft permit (including notice of intent to deny) shall allow at least 15 days for public comment.

(ii) Public notice of a hearing shall be given at least 30 days before the hearing.

(3)(i) Public notice given by the Regional Administrator for the reasons listed in paragraph (d)(1)(i) of this section shall be mailed to the applicant, and published in a daily or weekly paper of general circulation in the affected area.

(ii) Notice of application submission required by paragraph (d)(1)(ii) of this section shall be given to the surface landowner, tenants on the land where an injection well is located or is proposed to be located, and to each operator of a producing lease within one-half mile of the well location prior to submitting the application to the Regional Administrator.

(4) The notice of application submission in paragraphs (d)(1)(ii) and (d)(3)(ii) of this section shall contain:

(i) the applicant's name and address;

(ii) the legal location of the injection well;

(iii) nature of activity;

(iv) a statement that EPA will be preparing a draft permit and that there will be an opportunity for public comment; and

(v) the name and phone number of EPA contact person.

(5) All other notices shall contain:

(i) the name, address, and phone number of the Osage UIC office and contact person for additional information and copies of the draft permit;

(ii) name and address of permit applicant or permittee;

(iii) brief description of nature of activity;

(iv) brief description of comment period and comment procedures;

(v) location of the information available for public review; and

(vi) in the case of a notice for a hearing the notice shall also include:

(A) date, time, and location of hearing;

(B) reference to date of previous notices of the same permit; and

(C) brief description of the purpose of the hearing, including rules and procedures.

(e) *Public comments.* (1) During the public comment period, any person may submit written comments on the draft permit, and may request a public hearing. A request for hearing shall be in writing and state the issues proposed to be raised in the hearing.

(2) The Regional Administrator shall consider all comments when making the final decision, and shall respond to comments after the decision is made. The response shall:

(i) specify if any changes were made from the draft permit to the final permit decision, and why;

(ii) briefly describe and respond to all significant comments on the draft permit made during the comment period, or hearing, if held; and

(iii) be made available to the public.

(f) *Public hearings.* (1) The Regional Administrator shall hold a public hearing whenever he finds a significant amount of public interest in a draft permit, based on the requests submitted, or at his discretion.

(2) Any person may submit oral or written statements and data concerning the draft permit. The public comment period shall be automatically extended to the close of any public hearing held, or may be extended by the hearing officer at the hearing.

(3) A tape recording or written transcript of the hearing shall be made available to the public.

(g) *Reopening of the comment period.*

(1) If any of the information submitted during the public comment period raises substantial new questions about a permit, the Regional Administrator may:

(i) prepare a new draft permit;

(ii) prepare a revised statement of basis; or

(iii) reopen the comment period.

(2) Comments submitted during a reopened comment period shall be limited to the substantial new questions that caused its reopening.

(3) Public notice about any of the above actions shall be given and shall define the scope of the new questions raised.

(h) *Issuance and effective date of a permit.* (1) After the close of the comment period on a draft permit, the Regional Administrator shall make a final permit decision. The Regional Administrator shall notify the applicant and each person who commented or requested to receive notice. The notice shall include reference to the procedures for appealing a permit decision.

(2) A final permit decision shall become effective 30 days after giving notice of the decision unless:

(i) a later date is specified in the notice;

(ii) review is requested under § 147.2929(j); or

(iii) no comments requested a change in the draft permit, in which case the permit is effective immediately upon issuance.

(i) *Stays of contested permit conditions.* If a request for review of a final UIC permit § 147.2929(j) is granted, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final agency action. If the permit involves a new injection well or project, the applicant shall be without a permit for the proposed well pending final agency action. Uncontested provisions which are not severable from those contested provisions shall be stayed with the contested provisions.

(j) *Appeal of permits.* (1) Any person who filed comments on the draft permit or participated in the public hearing may petition the Administrator to review any condition of the permit decision. Any person who failed to file comments or participate in the hearing may petition for administrative review only to the extent of the changes from the preliminary permit to the final permit decision.

(2) A person may request review of a final permit decision within 30 days after a final permit decision has been issued. The 30-day period within which a person may request review begins with the service of notice of the Regional Administrator's final permit decision unless a later date is specified in that notice.

(3) The petition requesting review shall include:

(i) A demonstration that the petition is eligible under the requirements of paragraph (j)(1) of this section; and, when appropriate,

(ii) A showing that the condition in question is based on:

(A) a finding of fact or conclusion of law that is clearly erroneous; or

(B) an exercise of discretion or important policy consideration which the Administrator, in his discretion, should review.

(4) The Administrator may also decide, on his initiative, to review any condition of any UIC permit issued under these requirements. The Administrator must act under this paragraph within 30 days of the date notice was given of the Regional Administrator's action.

(5) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the request. To the

extent that review is denied, the conditions of the final permit decision become final agency action.

(6) Public notice shall be given by the Regional Administrator of any grant of a review petition by the Administrator. Notice shall be sent to the applicant, the person requesting the review, appropriate persons on the Osage County mailing list and to newspapers of general circulation in the county. Included in the notice shall be a briefing schedule for the appeal and a statement that any interested person may file an amicus brief. Notice of denial of the review petition will be sent only to the person(s) requesting the review.

(7) A petition to the Administrator, under paragraph (j)(1) and (j)(2) of this section is a prerequisite to the seeking of judicial review of the final agency action. For purposes of judicial review, final agency action occurs when a final UIC permit is issued or denied by the Regional Administrator and agency review procedures are exhausted. A final permit decision shall be issued by the Regional Administrator:

(i) When the Administrator issues notice to the parties involved that review has been denied;

(ii) When the Administrator issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of the remand proceedings if the proceedings are remanded, unless the Administrator's remand order specifically provides that the appeal of the remand decision will be required to exhaust the administrative remedies.

(The information collection requirements contained in paragraph (a)(3) were approved by the Office of Management and Budget under control number 2040–0042)

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Part III

Federal Maritime Commission

46 CFR Part 572

Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984; Final Rule

46 CFR Parts 538 and 580

Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States (including Service Contracts, Time/Volume Rates and Loyalty Contracts); Final Rule

46 CFR Part 585

Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Commerce of the United States; Final Rule

46 CFR Part 587

Actions To Address Conditions Unduly Impairing Access of U.S. Flag Vessels to Ocean Trade Between Foreign Ports; Final Rule

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket Nos. 84-26 and 84-32]

Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This Final Rule revises and supersedes the Interim Rule on agreements which implemented those provisions of the Shipping Act of 1984 governing agreements by or among ocean common carriers as well as certain marine terminal operator agreements. This Rule modified by addition, deletion, and revision the Interim Rule in the areas of definitions, exclusions and exemptions, agreement format, reporting and record keeping and the information requirements of the Information Form. In addition the transitional rules regarding mandatory provisions in agreements are deleted in their entirety. The Rule also makes various editorial, technical, and clarifying changes in the Interim Rule. As of this publication, all of the Commission's interim regulations to implement the 1984 Act are finalized.

DATE: This Rule is effective on December 15, 1984.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

The Shipping Act of 1984, Pub. L. 98-237, 98 Stat. 67, 46 U.S.C. app. 1701-1720 (the Act or the 1984 Act) was signed into law on March 20, 1984 with an effective date of June 18, 1984. The 1984 Act superseded the Shipping Act, 1916 (1916 Act) (46 U.S.C. app. 801 *et seq.*) with respect to the regulation of agreements by or among ocean common carriers, and certain other subject persons, in the foreign oceanborn commerce of the United States. The Act makes significant changes with regard to the kinds of agreements that are within its scope, the mandatory content of certain kinds of agreements, the procedures for filing, processing, and reviewing agreements, and the parameters of the antitrust immunity which it confers on agreements. Other areas of significant change include new statutory definitions, and a somewhat modified exemption authority. The Act authorizes the requiring of periodical or special reports as well as the filing of conference minutes and provides for penalties for infringement of its provisions.

The Act and its legislative history set forth certain policies to guide regulation under the new statutory scheme. One fundamental purpose of the Act is to establish a nondiscriminatory regulatory process with a minimum of government intervention and regulatory costs. Another is to provide an efficient and economic ocean transportation system in harmony with international shipping practices. To these ends, agreements are to be reviewed and processed within a fixed period of time and generally will become effective after a short waiting period. Only those pending agreements which raise concern under the general standard or the conduct prohibited by section 10 of the Act are to be subjected to injunctive challenge in federal court where the Commission has the burden of proof. The Act thereby places greater emphasis on the subsequent monitoring of an agreement after it has become effective in order to ensure that agreement operations are conducted consistent with the requirements of the Act.

On May 29, 1984, pursuant to section 17(b) of the Act (46 U.S.C. app. 1716(b)) which authorizes the Commission to prescribe interim rules without adhering to the usual notice and comment procedures under the Administrative Procedure Act (5 U.S.C. 553), the Commission published an Interim Rule Implementing those provisions of the Act which govern agreements. *Rules Governing Agreements By Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984,* Docket No. 84-26 (49 FR 22296-22318). Interested persons were given 90 days to comment on the Interim Rule. In addition, interested persons were afforded an opportunity to submit emergency comments addressing any matters which might warrant modification prior to the June 18, 1984 effective date. A number of emergency comments were received and on June 14, 1984, the Commission published amendments to the Interim Rule (49 FR 24697).[1]

Subsequently, during the comment period, the Commission received petitions from a number of conferences to suspend certain record keeping and reporting requirements in Subpart G. On September 17, 1984 the Commission published a further amendment to the Interim Rule which deferred the implementation of certain of those requirements pending the issuance of a Final Rule (49 FR 36371).

Thirty-nine filings were received in Docket No. 84-26: 14 emergency comments filed prior to June 18, 1984; 23 final comments either timely filed or filed shortly after the deadline and granted an extension of time for filing;[2] and two petitions seeking relief from certain requirements of Subpart G. Because of the extensive number of parties that participated in this proceeding, comments are identified by number in the following discussion. A list of comments filed in Docket No. 84-26 is provided in the conclusion to the Supplementary Information.

On September 17, 1984, again pursuant to the section 17(b) rulemaking authority, the Commission published a third amendment to the Interim Rule. *Amendments to Rules Governing Agreements by Ocean Common Carriers and Other Persons,* Docket No. 84-32 (49 FR 36371). This amendment added a new § 572.103(g) to state Commission policy regarding the completeness and definiteness with which agreement authority must be described, and a new § 572.406 to establish guidelines regarding open-ended authority and interstitial authority. Interested persons were given 30 days to comment on this amendment. Ten timely comments were received in Docket No. 84-32. These comments are also listed in the conclusion to the Supplementary Information.

Many of the concerns raised in the emergency comments and in the Subpart G petitions filed in Docket No. 84-26 have been addressed through changes in the mandatory provisions of Subpart H and through the temporary suspension of certain requirements in Subpart G.

[1] The Office of Management and Budget (OMB) clearance number was also published in the Federal Register on June 14, 1984 (49 FR 24521).

[2] Several persons sought to file late comments in Docket No. 84-26 well after the close of the comment period and these requests were denied. For the most part these comments are either repetitious of points already raised in other comments or are rendered moot by the Commission's action regarding Subpart H. For a discussion of the reasons for rejecting these late filed comments see the Commission's Order of Denial in Docket No. 84-26 dated October 17, 1984.

Matters raised in the emergency comments and the petitions which were not addressed in the June amendments or the September Order have been considered in connection with the issuance of the Final Rule. Thus, all timely comments received in Docket Nos. 84–26 and 84–32 have been reviewed and considered. The Supplementary Information discusses significant matters raised in the comments. Any comments not expressly mentioned herein, have either been incorporated as a technical change without discussion or have been found to be without merit or irrelevant.

In the discussion which follows, the term Interim Rule (designated Part 572) refers to the rules issued in Docket No. 84–26, as subsequently amended and suspended, and the amendment to Part 572 issued in Docket No. 84–32. The rule which is now published is referred to as the Final Rule.

II. Discussion of Comments on Part 572 and Appendix A

A number of technical changes have been made throughout Part 572 and Appendix A. Some changes were prompted by comments and others are clarifying or technical changes made to improve this part. One change made throughout has been the substitution of the phrase "this part" for phrases such as "this rule" of "these rules".

Subpart A—General Provisions

Subpart A contains provisions which are of general applicability to Part 572. Specific sections state the authorities, purpose and policies of Part 572 and define certain terms.

Section 572.101 Authority.

Section 572.101 states the statutory authorities for Part 572. No comments were received on this section and no substantive changes have been made to it in the Final Rule.

Section 572.102 Purpose.

Section 572.102 states the purpose of Part 572, namely to implement those provisions of the Act which govern agreements among ocean common carriers and other subject entities. Comment 38 states that the words "other entities" should be changed to "marine terminal operators" because such operators are the only entities other than ocean common carriers which are required to file agreements under the Act. This point is well taken. Therefore, as a clarification, § 572.102 is amended to recite the language of section 4 of the Act which states that the Act applies to agreements by or among ocean common carriers and to agreements among marine terminal operators and among one or more ocean common carriers. Marine terminal operator agreements subject to Part 572 must have a nexus with foreign commerce.

Section 572.103 Policies.

Section 572.103 sets forth the general policies to be followed in administering the regulatory regime established by Part 572.

Section 572.103(b)—Section 572.103(b) states that in reviewing agreements under the general standard only that information which is relevant and necessary to a section 6(g) review shall accompany particular types of agreements. Comment 22 takes issue with § 572.103(b) specifically and § 572.103 generally to the extent that they establish a basis for requiring the Information Form with certain agreement filings. The basis for the Information Form requirement is discussed below in connection with the comments to Subpart D, Subpart F and Appendix A. As indicated below, some adjustments have been made in the Information Form in response to comments. However, the basic requirement of a Form is being retained. Therefore, there is no need to modify the statement of policies with regard to informational needs.

Section 572.103(f)—Section 572.103(f) states Commission policy regarding the need for and means of achieving compliance with the Act's requirement that mandatory provisions be included in certain kinds of agreements. Comment 22 urges that conferences continue to be allowed to draft their own mandatory provisions. As indicated below in the discussion of Subpart H, the purpose of requiring adoption of the model mandatory provisions in Subpart H has been achieved, and Subpart H is deleted from the Final Rule. Appropriate changes have been made in the statement of policy in paragraph (f) to indicate that parties to conference agreements may develop their own mandatory provisions.

Section 572.103(g)—Section 572.103(g) together with § 572.406, were added in Docket No. 84–32 as new sections of Part 572. Section 572.103(g) states Commission policy that agreement must be clear and definite, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will operate.

Although Comment 102 expresses strong support for inclusion of § 572.103(g), a number of other comments suggest that it is vague, unnecessary, or inappropriate and should be deleted or modified. The necessity of such a policy statement was not apparent at the time the Interim Rule was issued, The principles set forth in the policy statement were well settled under the administration of the 1916 Act and nothing in the 1984 Act or its legislative history indicated any departure from those established principles. However, the early experience in the administration of the 1984 Act provided a number of significant instances in which filed agreements contained unacceptably vague, incomplete or indefinite statements of authority. It was this experience that prompted the addition of § 572.103(g) and § 572.406 to Part 572.

This statement of policy merely represents a codification of existing policy. As a point of clarification, it should be noted that it is not the intent of this section to provide a basis for imposing detailed limits on every agreement. Its purpose is to ensure that a complete agreement is filed in sufficient detail to conduct a meaningful review. However, no change in the language of § 572.103(g) is necessary and it is retained in the Final Rule. The other issues raised by the comments are addressed below in the discussion of § 572.406.

Section 572.104 Definitions.

Section 572.104 lists definitions used in Part 572. Changes have been made in response to comments to state more precisely particular definitions.

Section 572.104(a)—Agreement. Section 572.104(a) recites the definition of agreement. This definition is amended to include "cancellation", thereby conforming the definition to the statute.

Section 572.104(b)—Antitrust Laws. Section 572.104(b) recites the definition of "antitrust laws" found in section 3(2) of the Act. Comment 38 states that this definition is used only once in the Interim Rule and should be eliminated, or, in the alternative, rephrased to provide the United States Code citations of the referenced statutes. This definition was included to improve the efficiency of Part 572 as a complete document and for that reason it shall be retained. The definition, however, has been modified to use the United States Code citations in order to make the definitions more functional.

Section 572.104(c)—Appendix. Section 572.104(c) defines the additional material which is appended to, and constitutes a part of, an agreement as an "appendix". Comment 22 suggests that the definition is so narrow as to preclude the use of an appendix to

publish provisions, such as self-policing rules, which have routinely been published in an appendix. Comment 39 suggests that the definition, in conjunction with other sections of Part 572, would impose the full 45-day waiting period on "appendices" contents.

The use of an appendix is explained at § 572.402(f), which governs the contents of such an appendix. Section 572.402(f) is amended to permit an expansion of the use of an appendix. The "appendix" publication is not mandatory, nor is there any prohibition against the "appendix" publication of other agreement provisions whose physical location is an agreement is not otherwise specified in this part. The period of review conducted for such filings depends upon the substantive content of the "appendix" and not its form. Parties are not precluded from routine use of appendices, unless the particular provision is one whose placement is required elsewhere in the agreement pursuant to §§ 572.402, 572.501, and 572.502. The Interim Rule definition fulfills these objectives and is retained.

Section 572.104(e)—Common Carrier. Section 572.104(e) recites the definition of the term "common carrier" which is set forth in section 3(6) of the Act. The statutory definition is stated conjunctively rather than disjunctively and requires both the assumption of responsibility for transportation and the utilization of a vessel. Comment 2 suggests that the word "and" be deleted from paragraph (e)(1) and replaced with the word "or". Because this suggested change would substantively alter the statutory definition of a common carrier, the change is not appropriate. The Final Rule therefore continues to recite the statutory definition.

Section 572.104(f)—Conference Agreement. Section 572.104(f) defines a "conference agreement" as one which provides for the collective fixing of rates, an administrative structure, and the filing of a common tariff, unless other features of the arrangement bring it within the definition of a consortium, joint service, pooling, sailing or transshipment agreement. Comment 22 suggests that the "central organization" element of this definition does not clearly encompass simple administrative structures. Comment 28 also suggests that the minimal administrative structure of agreements previously designated "rate agreements" is not clearly embraced by the definition. This definition is intended to include rate agreements. The Interim Rule definition shall therefore be revised to remove any implication that only a large, complex administrative structure would bring a ratemaking agreement within the scope of this definition.

Section 572.104(g)—Consultation. Section 572.104(g) defines "consultation" as the process of conferring between carriers and shippers for the purposes of resolving commercial disputes or reducing malpractices. Comment 39 suggests that the definition's "resolving commercial disputes" language potentially oversteps the "promote . . . commercial resolution" language of the Act and could be interpreted to impose a requirement of binding arbitration.

In response to this suggestion, the definition in the Final Rule shall be clarified to state that "consultation" means a process whereby a conference and a shipper confer for the purpose of promoting the commercial resolution of disputes and/or the prevention and elimination of the occurrence of malpractices.

Section 572.104(i)—Effective Agreement. Section 572.104(i) defines an "effective agreement" as one approved pursuant to section 15 of the 1916 Act or one permitted to become effective pursuant to sections 5 and 6 of the 1984 Act. Comment 38 states that the term is not used in Part 572 and should be deleted. Comment 24 contends that the definition does not encompass agreements which are exempted under either the 1984 Act of the 1916 Act.

The term "effective agreement" is used in the definition of "modification" in section 572.104(r), which in turn supports sections 572.402 and 572.403. Definition of the term is retained, but its scope is expanded to include an agreement previously approved pursuant to section 15 of the 1916 Act or effective pursuant to an exemption under the 1916 Act, or filed and effective pursuant to sections 5 and 6 of the 1984 Act or exempt pursuant to section 16 of the 1984 Act.

Section 572.104(m)—Interconference Agreement. Section 572.104(m) defines an "interconference agreement" as one between conferences serving different trades. Comments 22 and 28 contend that the definition is unnecessarily restricted by the "different trades" condition. These Comments have merit. Because there is no prohibition against an agreement between two conferences in the same trade, such an agreement should be included in the definition of "interconference agreements" and made subject to the requirements placed on such agreements by the Act and Part 572. The Final Rule therefore simply defines "interconference agreement" to mean an agreement between conferences.

Section 572.104(n)—Joint Service/Consortium Agreement. Section 572.104(n) defines a "joint service" or "consortium" agreement as a price fixing arrangement between ocean common carriers wherein the parties operate generally as a single carrier, under a single operating name and a common operating management.

Comment 27 suggests that the definition is too narrow and fails to contemplate a situation where a joint service holds out service only through its participation in a conference and does not independently fix its own rates or publish its own tariff. Comment 22 also contends that a joint service does not always include all of the attributes prescribed by the Interim Rule definition.

The 1984 Act refers to joint service/consortia but does not define these terms. In the interest of providing the industry some guidance in this area, we have developed a definition as consistent as possible with prior convention. We believe that agreements which engage in, or have the authority or potential to engage in, the activities described in this definition are properly treated as a single type of agreement and denominated a "joint service" or "consortium" agreement for the purposes of the Act and Part 572. We agree, however, that the joint service definition should be amended to include those agreements in which the parties choose to exercise their rate fixing and tariff authorities through participation, as a single entity, in a conference or other duly authorized agreement. Accordingly, § 572.104(n) (2) and (3) are revised to read: "(2) independently fixes its own rates, charges, practices and conditions of service or chooses to participate in its operating name in another agreement which is duly authorized to determine and implement such activities; (3) independently publishes its own tariff or chooses to participate in its operating name in an otherwise established tariff."

Section 572.104(o)—Marine Terminal Facilities. Section 572.104(o) defines the term "marine terminal facilities" to include off-dock container freight stations at inland locations. Comment 38 urges the deletion of this definition because the term does not otherwise appear in Part 572.

This term supports the definition of a marine terminal operator in § 572.104(p). It is appropriate, therefore, to define the facilities utilized by marine terminal operators in order to resolve uncertainties as to the Commission's

jurisdiction over agreements governing the use or operation of such facilities. As indicated in some of the other comments, there appears to be some confusion concerning the facilities that are provided by the "marine terminal operator" defined in section 3 of the 1984 Act.

Comments 20 and 34 state that Commission jurisdiction is improperly expanded by defining the term "marine terminal facility" to include off-dock container freight stations at inland locations or other similar facilities from which cargo is tendered to a consignee or received from shippers for vessel or container loading. These Comments suggest that Congress intended the reach of the 1984 Act to be no greater than that of the 1916 Act with respect to marine terminals. Comment 22 argues that the definition would subject importers and exporters to Commission regulation as marine terminal operators and enable them to obtain antitrust immunity under the 1984 Act.

Off-dock container freight stations are properly included within the term "marine terminal facilities." Both the 1984 Act and the 1916 Act refer to terminal operators as persons "furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water." As Comment 20 acknowledges, this phrase has been construed under the provisions of the 1916 Act in *Richmond Transfer and Storage Company*, 20 S.R.R. 599, 20 S.R.R. 177 (1980), to include marine terminal facilities not located on the dock at the water's edge. There is nothing in the 1984 Act or its legislative history to indicate that Congress intended the Commission to now construe marine terminal facilities so as to exclude off-dock container freight stations. Accordingly, the Commission will not, as urged by some comments, delete off-dock container freight stations from the marine terminal facility definition in § 572.104(o).

Comment 28 is concerned that agreements for "pure labor services," such as stevedoring contracts, may be made subject to the filing requirements of the 1984 Act because the phrase "and services connected therewith" is used in defining "marine terminal facilities" in § 572.104(o). Comment 28 misconstrues this definition. The "Supplementary Information" to the Interim Rule indicated that neither the term "marine terminal facility", nor the term "marine terminal operator", would operate to extend Commission jurisdiction over stevedoring or "pure labor services". The phrase "and services connected therewith" is intended to refer to those labor services that are incidental to terminal operators, such as free time, checking, or handling. Accordingly, the suggestion that the above-referenced phrase be deleted has not been adopted.

Section 572.104(p)—Marine Terminal Operator. Section 572.104(p), which tracks the language of the 1984 Act, defines a "marine terminal operator" as a person:

> . . . *engaged* . . . in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water. (Emphasis added).[3]

This definition shall be modified to make clear that shippers, or consignees, as well as their facilities, are not made subject to Part 572 and the Commission's jurisdiction merely because the shippers' or consignees' facilities are used to tender or received proprietary cargo. Shippers or consignees, who for their own or the carrier's convenience, tender or receive proprietary cargo at their owned or leased facilities are not *engaged* in the business of furnishing terminal facilities in connection with a common carrier by water. Such shippers or consignees provide facilities to common carriers only as an incidental element of their primary business concern. Such consignees and shippers do not meet the statutory definition of a marine terminal operator and are not subject to Part 572 and the agreement provisions of the 1984 Act. Accordingly, § 572.104(p) is amended by adding a statement that the term "marine terminal operator" does not include shippers or consignees who exclusively furnish marine terminal facilities or services in connection with the tendering or receiving of proprietary cargo from a common carrier by water.

Section 572.104(r)—Modification. Section 572.104(r) defines those changes which are interpreted to be "modifications" to agreements and therefore subject to sections of Part 572 dealing with "modifications". Comment 22 contends that "cancellations" are not properly includable in the definition. The Act at section 3(1) suggests a distinction between "modification" and "cancellation." Section 572.104(r) is therefore amended to delete the reference to "cancellations".

Section 572.104(s)—Non-Vessel-Operating Common Carrier. Section 572.104(s) defines a common carrier which does not operate the vessels by which the ocean transportation is provided as a "non-vessel-operating common carrier" (NVOCC) and establishes its relationship to the underlying "ocean common carrier" as that of a "shipper". Comment 39 suggests that this definition be modified to expressly state that an NVOCC is a "common carrier" in its relationship with the underlying shipper. The Interim Rule definition, however, recites the statutory definition and shall be retained in the Final Rule.

Section 572.104(x)—Port. Section 572.104(x) defines the term "port" as the place at which an ocean common carrier originates or terminates (and/or transships) its actual ocean carriage of cargo or passengers as to any particular transportation movement. Comment 23 suggests certain revisions to the definition of "port" as well as to the instructions to Part V(A) of the Information Form. Comment 23 objects that the way in which the term "port call" is used in the Form is overly broad and imposes an enormous data collection burden. Certain revisions have been made to the Information Form which should resolve this concern. Therefore, there is no need to change the definition of "port" in § 572.104(x).

Section 572.104(z)—Service Contract. Section 572.104(z) defines the term "service contract" as used in Part 572. This definition recites the definition set forth in the Act and makes no express reference to service contracts with shippers' associations. Comment 39 states that this definition would be improved by expressly recognizing the authority of conferences to enter into service contracts with shippers' associations. Comment 39 states that this change would better reflect the intent of the Act and its legislative history. This suggestion has merit and the definition shall be amended as suggested.

Section 572.104(aa)—Shipper. Section 572.104(aa) tracks section 3(23) of the Act and defines the term shipper as an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is made. Comment 28 suggests clarification of the definition by the inclusion of the word "other" after the words "owner or". Comment 33 suggests

[3] There is a subtle but possible significant difference between the 1984 Act's definition of marine terminal operator and the 1916 Act's definition of a terminal operator as an "other person". Section 1 of the 1916 Act defines the term "other person" as "any person . . . 'carrying on the business of forwarding' *or* furnishing wharfage, dock, warehouse or other terminal facilities in connection with the common carrier". The term "carrying on the business of forwarding" is defined separately in the 1916 Act. Although the Commission has previously referred to terminal operators as persons carrying on the business of furnishing wharfage dockage etc., the phrase "carry on the business of" does not clearly modify the language "furnishing wharfage, dockage, etc." The 1984 Act, on the other hand, unequivocally requires marine terminal operators to be "engaged in the business of furnishing wharfage, dockage, etc."

the addition of a statement that the term "shipper" also includes "shippers associations". The first suggestion is adopted. This revision should also accommodate the other suggestion that the term "shipper" be expanded to include shippers' association.

Section 572.104(bb)—Shippers' Association. Section 572.104(bb) recites the statutory definition of a shippers' association. Comment 33 states that this definition should make clear that shippers' associations are included within the meaning of the term "shipper" wherever that term is used in Part 572. In view of the change made in the term "shipper", no change in this definition is deemed necessary. The question of whether a shippers' association should be composed only of persons who are the beneficial owners of cargo, as noted in Comment 22, is the subject of a pending petition and is not addressed here.

Section 572.104(cc)—Shippers' Requests and Complaints. Section 572.104(cc) describes the shipper/conference communications which constitute "shippers' requests and complaints" and which are subject to Part 572. Comment 39 suggests that the definition be limited to written communications and exclude misrating claims.

Limiting shippers' requests and complaints in written communications and excluding complaints pertaining to misratings is unduly restrictive and unwarranted. The matter of written versus oral communications is a procedural matter better dealt with in the context of the conference's rules regarding shippers' requests and complaints. Moreover, there appears to be no reason for excluding misratings as a subject matter for shippers' requests and complaints. The handling of misratings is a matter commonly dealt with in tariff publications and as such should not be excluded. Given the nature of misratings, and as long as the conference tariff provides an efficient and fair mechanism for their resolution, it is doubtful that such matters would come to the conference as a shippers' request or complaint. However, if the tariff fails to provide an appropriate remedy, then the tariff itself is open to criticism and is a valid subject for a request or complaint.

It is also suggested that § 572.104(cc) be expanded to include communications involving service contracts. This suggestion has merit and § 572.104(cc) has, therefore, been revised to provide that "shippers' requests and complaints" includes a communication from a shipper to a conference "requesting to enter into a service contract."

Section 572.104(dd)—Space Charter Agreement. Section 572.104(dd) defines that combination of inter-carrier activities which constitutes a "space charter agreement." Comment 28 suggests that there is a possible overlap between the "space charter" and "transshipment" agreement definitions and suggests that the definition of a space charter agreement expressly exclude transshipment agreements.

There is indeed some overlap between the two definitions. This occurs because a transshipment agreement is a type of space charter. To specifically exclude them from the definition of space charter would confuse this relationship. The suggestion therefore is not adopted.

Section 572.104(ff)—Transshipment Agreement. Section 572.104(ff) defines that combination of inter-carrier activities and authorities which are classified as "transshipment agreements." Apart from the previously discussed comment relative to the overlap between "space charter" and "transshipment agreements", Comment 38 contends that the "transshipment agreement" definition is unused in Part 572 and should be deleted. The term "transshipment agreement" is used as an exclusion in defining conference agreements in § 572.104(f) (an exclusion cited in section 3(7) of the Act). The term is also used and components of its definition are repeated in the exemption for "non-exclusive transshipment agreements". The definition therefore will be retained.

Subpart B—Scope

The purpose of Subpart B is to set forth those agreements which are subject to Part 572 and to specifically list certain kinds of agreements to which the rules of Part 572 do not apply. In response to certain comments and in order to state the distinction between subject and non-subject agreements more clearly, Subpart B is being reorganized as two sections. Section 572.201 of the Final Rule encompasses the agreements which were set forth in §§ 572.201 and 572.202 of the Interim Rule and is retitled "Subject Agreements." Section 572.202 of the Final Rule includes those agreements which were set forth in §§ 572.203 through 572.208 of the Interim Rule and is retitled "Non-subject agreements".

Comment 38 proposes that Subpart B be expanded to include "agreements related to transportation to be performed within or between foreign countries." Comment 22, on the other hand, urges that this same category of agreements be added as an exclusion in Subpart C.

Section 5(a) of the Act expressly provides that foreign transportation agreements are not required to be filed with the Commission. Because these agreements are not subject to filing, Subpart B is being modified to include them as agreements which are not subject to Part 572. Because of this addition of the broad class of foreign transportation agreements in Subpart B, the inclusion of foreign inland agreements or foreign marine terminal agreements in Subpart C has been eliminated from the Final Rule. Foreign transportation agreements are not subject to Part 572.

Comment 22 argues that transshipment agreements fall within the class of foreign transportation agreements specified in section 5(a) of the Act and should be excluded from filing. The Comment objects to continued regulation of transshipment agreements whether exclusive or non-exclusive. To the extent that these agreements are not subject to this part under section 572.202(c) or fall within the exemption of section 572.306, they need not be filed. Other types of transshipment agreements, however, are subject to filing requirements.

Section 572.201 (redesignated § 572.201(a)) Agreements by or Among Ocean Common Carriers.

Section 572.201 recites the listing of agreements in section 4(a) of the Act. No substantive changes have been made to this section in the Final Rule.

Section 572.202 (redesignated § 572.201(b)) Marine Terminal Operator Agreements Involving Foreign Commerce.

This section is based on section 4(b) of the Act. In conjunction with § 572.202(e) it clarifies and implements the distinction under the Act between marine terminal operator agreements which involve foreign commerce and those which are exclusively in interstate commerce. The suggestion in Comment 20 that further clarification of the status and treatment of marine terminal operator agreements is necessary has been addressed above in discussing the definitions of "marine terminal facility" and "marine terminal operator".

Section 572.203 (redesignated § 572.202(e)) Marine Terminal Operator Agreements Exclusively in Interstate Commerce.

This section states that a marine terminal operator agreement exclusively in interstate commerce is not subject to Part 572. Comment 38 suggests that this section is superfluous and recommends

that it be deleted. Inasmuch as this section, together with § 572.201(b), distinguishes those exclusively domestic marine terminal operator agreements which are outside the scope of Part 572 from those terminal agreements involving foreign commerce, this section serves a useful purpose and shall be retained. Certain technical changes suggested by Comment 38, however, have been adopted.

Comment 21 expresses concern about inadvertent antitrust exposure and would prefer a procedure whereby parties could obtain antitrust immunity under both the 1984 and 1916 Shipping Acts. Parties that have such concern may file an agreement under both the 1984 and 1916 Shipping Acts and seek to obtain antitrust immunity under both Acts.

Section 572.204 (redesignated § 572.202(d)) Common Carrier Marine Terminal Agreements.

This section provides that Part 572 does not apply to common carrier terminal agreements. Comment 38 suggests that the word "marine" should be added before the word "terminal". This change would bring the language of this section into conformity with section 7(b)(3) of the Act and therefore it is adopted.

Section 572.205 (redesignated § 572.202(f)) Non-Vessel-Operating Common Carrier Agreements.

This section states that agreements solely and exclusively between non-vessel-operating common carriers are not subject to Part 572. Comment 38 states that this section is superfluous and should be deleted. The purpose of this section is to provide guidance with regard to agreements between or among NVOCC's. Such agreements were subject to the 1916 Act but are not within the Commission's jurisdiction under sections 4 and 5 of the 1984 Act. An express statement that these agreements are not subject to Part 572 is therefore appropriate and will be retained in the Final Rule.

Two technical changes shall be made in this section. Comment 38 believes that the use of the word "by" in this section might be read to exclude a three-party space-charter and sailing agreement between one NVOCC and two ocean common carriers. To avoid this unintended interpretation, the word "by" has been deleted from the Final Rule. In addition, the phrase "solely and exclusively" is added in order to further clarify the status of agreements among NVOCC's under the Act.

Section 572.206 (redesignated § 572.202(g)) Ocean Freight Forwarder Agreements.

This section states that ocean freight forwarder agreements are not subject to Part 572. Comment 38 argues that this section is superfluous and should be deleted. Again there would appear to be a useful purpose served by retaining this section in order to provide guidance on those maritime industry agreements which were subject to the 1916 Act but not subject to sections 4 and 5 of the 1984 Act. The technical change suggested in Comment 38 would improve this section and the words "by or" are deleted. In addition, the phrase "solely and exclusively" is added to further clarify this section.

Section 572.207 (redesignated § 572.202(b)) Maritime Labor Agreements.

This section is a restatement of section 5(e) of the Act. No comments were received on this section and no substantive changes have been made to it in the Final Rule.

Section 572.208 (redesignated § 572.202(a)) Acquisitions.

This section is a restatement of section 4(c) of the Act. No comments were received on this section and no substantive changes have been made to it in the Final Rule.

Subpart C—Exemptions

Subpart C treats those agreements which have been exempted from filing or other requirements by the Commission pursuant to section 16 of the Act. In response to certain comments, Subpart C has been reorganized to deal solely with Commission ordered exemptions. The statutory exclusions formerly listed in this subpart have been relocated in Subpart B, as discussed above. Section 572.301 sets forth the procedures applicable to exemptions. Thereafter, each separate exemption is listed in a separate section. This arrangement will facilitate the orderly addition of any new exemptions to this subpart.

Section 572.301 Exemption Procedures.

Section 572.301 sets forth procedures for exempting agreements subject to the Act from any requirement of the Act.

Section 572.301(a)—Authority. Section 572.301(a) concludes with the statement that: "The antitrust laws do not apply to any agreement exempted from any requirement of the Act, including filing and Information Form requirements." Comment 38 states that this sentence should be deleted because the Commission does not have jurisdiction over the antitrust laws. This language was suggested by section 7 of the Act which states that the antitrust laws do not apply to certain agreements. Its purpose was merely to indicate, as provided in the Act, that agreements exempt pursuant to section 16 enjoy antitrust immunity. It was not the intention of this statement to assert or imply Commission jurisdiction over the antitrust laws. In order to eliminate any confusion, this sentence shall be deleted. Deletion, of course, does not in any way affect whatever antitrust immunity attaches to exempt agreements.

Section 572.301(c)—Application for Exemption. Comment 38 suggests that in the first sentence of § 572.301(c) the words "or revocation" should be changed to read "or revocation of an exemption." This suggested change clarifies this section and is adopted.

Section 572.301(f)—Retention of Agreement by Parties. Section 572.301(f) requires that any agreement which has been exempted pursuant to section 16 of the Act shall be retained by the parties and be made available upon request for inspection during the term of the agreement and for a period of three years its termination.

Comments 22 and 38 object to the requirement that copies of exempt agreements be retained for a three-year period. These Comments do not question the Commission's authority to require retenion of agreements but argue that the Commission should not, as a matter of policy, impose an across-the-board requirement for agreements with a *de minimis* impact.

This record keeping requirement is necessary to ensure that the Commission is able to carry out its trade monitoring responsibilities under the Act. Should a question of violation of the Act arise, the exempt agreement must be available for review. Moreover, a three-year period does not appear to be unreasonable. Finally, it does not appear to be a significant burden for parties to retain a copy of an agreement for a period of three years after its expiration. The record retention requirement, therefore, shall be retained as to exempt agreements.

Section 572.302 Foreign Inland Transportation Agreements—Exclusion.

This section in the Interim Rule stated an exclusion from filing for foreign inland transportation agreements. Comment 38 states that such agreements are not statutorily excluded from filing but should nevertheless be exempt from filing pursuant to section 16 of the Act.

Section 5(a) of the Act excludes from filing "agreements related to transportation to be performed within or between foreign countries." The Commission interprets this broad class of agreement to include foreign inland transportation agreements. Because of the inclusion of foreign transportation agreements in Subpart B there is no longer any need to retain this section and it is deleted from the Final Rule .

Section 572.303 Foreign Marine Terminal Agreements—Exclusion.

Section 572.303 in the Interim Rule states statutory exclusion from filing for foreign marine terminal agreements. Comment 38 states that these agreements should be treated as exemptions rather than as exclusions. Foreign marine terminal agreements, however, are also a specific type of the foreign transportation agreement referred to in section 5(a) of the Act. They are, therefore, included within the scope of section 572.202(c) in the Final Rule and are deleted from Subpart C.

Section 572.304 (redesignated § 572.302)) Non-Substantive Modifications to Existing Agreements—Exemption.

This section is based on the exemption which formerly appeared at 46 CFR 524.3(d). The former exemption covered three specific kinds of agreements or modifications:

(1) Technical changes to the text of the agreement itself;

(2) Changes in titles of persons or committees; and

(3) Agreements and changes affecting office facilities, furnishings, supplies and other housekeeping matters. The exemption in the Interim Rule narrowed the former exemption by eliminating the first two types of changes.

Comments 22, 24, 26, 38 and 39 urge that the full scope of the former exemption be restored in the Final Rule. The reason for restricting the former exemption was to ensure that certain changes to the text of the agreement or in the personnel of the agreement administration would be filed so that the agreement on file with the Commission would accurately reflect the actual agreement currently in effect among the parties.

These Comments have merit and the full scope of the former exemption is restored. The purposes to be achieved by limiting the exemption can still be achieved if all such non-substantive agreements or modifications are filed with the Commission for informational purposes. Finally, this section is amended, as suggested by Comment 26, to allow parties to seek a determination from the Director, Bureau of Agreements and Trade Monitoring as to whether a particular agreement or modification in non-substantive.

Section 572.303 (redesignated § 572.304) Husbanding Agreements—Exemption.

This section in the Interim Rule clarified and continued the exemption of husbanding agreements. No comments were received on this section, and no substantive changes have been made to this section in the Final Rule.

Section 572.304 (redesignated § 572.305) Agency Agreements—Exemptions.

This section in the Interim Rule clarified and continued the exemption for agency agreements pursuant to section 16 of the 1984 Act. Comment 19 states that a blanket exemption for agency agreements is not appropriate. This comment, filed by the Port of Los Angeles, notes that in Docket No. 83–48, *Alaska Maritime Agencies, Inc., et al.* v. *Port of Anacortes, et al.*, agents took the position that they should not be responsible for certain charges where they act for disclosed principals. The Port, however, states that it is not always clear for whom an agent is working or whether the agent is authorized to make certain representations. The Port, therefore, seeks some modification of the exemption to address the alleged need of marine terminal operators to know the scope of the authority of the parties with whom they are dealing.

Subsequent to the filing of Comment 19, a settlement was reached and approved by the Presiding Officer in Docket No. 83–48 which may address the Port's concern. *See Alaska Maritime Agencies Inc., et al.* v. *Port of Anacortes, et al.*, Initial Decision and Order Approving Settlement, administratively final October 15, 1984. In addition, § 572.301(f) requires that exempt agreements be retained for a period of three years. Should any problems develop, an affected party could bring them to the Commission's attention. Finally, ports or other parties may seek modification or revocation of this exemption at any time in a separate proceeding under the procedures of this subpart. Such modification, if warranted, would then be based upon a proper factual record. Neither substantive modification nor revocation, however, would appear to be warranted at this time.

Section 572.306(a) (redesignated § 572.304(a)).

Comment 22 believes that the comma following "an agent" where it first appears in this section might imply that the agent is subject to the Act rather than merely state the type of agent whose agreement is subject to the Act. In order to remove any implication that all agents are subject to the Act, the recommended change shall be made and the comma shall be deleted.

Section 572.306(b) (redesignated § 572.304(b)).

Comment 22 also believes that a change is necessary in paragraph (b)(2). This Comment suggests that the words "do not" may have been omitted from paragraph (b)(2) and therefore suggests that the paragraph be revised to read "except those . . . (2) which *do not* permit an agent to enter into similar agreements with more than one carrier in the trade. . . ." There was no omission in the Interim Rule. The language in the Interim Rule carried over the exemption as it was formerly stated in 46 CFR 520.12(b). The former exemption did not apply to agency agreements which permit an agent to enter into similar agreements with more than one carrier in the trade. Because of the potential competitive significance of such agreements an exemption from filing would not be appropriate. This suggestion therefore has not been adopted.

Section 572.307 (redesignated § 572.305) Equipment Interchange Agreements—Exemption.

Section 572.307 in the Interim Rule clarified and continued the exemption for equipment interchange agreements. No comments were received on this section, and no substantive changes have been made to it in the Final Rule.

Section 572.308 Joint Policing Agreements—Exemption.

Section 572.308 continued the 1916 Act exemption for joint policing agreements only for the period of the Interim Rule. This exemption terminates thirty days after the issuance of the Final Rule, and thereafter, joint policing agreements must be filed pursuant to the requirements of the Act and Part 572. Comment 33 supported the termination of this exemption. Comments 22 and 38 are opposed to termination. Comment 22 questions whether joint policying arrangements are even subject to filing.

Joint policing agreements, at a minimum, come within section 4(a)(5) of the Act which applies to agreements among ocean common carriers to engage in an exclusive, preferential, or cooperative working arrangement. In addition, sections 4(a)(1) and (2) of the Act might also apply under certain circumstances. Joint policing

arrangements are therefore clearly within the scope of the Act.

Comment 22 argues further that even if such arrangements are subject to sections 4 and 5 of the Act, they should nevertheless be exempt from filing. Comment 22, as does Comment 38, maintains that this exemption may not be terminated at this time without further notice and opportunity for hearing.

This rulemaking proceeding was instituted, among other authorities, pursuant to section 16 of the 1984 Act. *See* 46 CFR 572.101. The Interim Rule published in the **Federal Register** on May 29, 1984, 49 FR 22300, notified all interested parties pursuant to the Administrative Procedure Act (APA) (5 U.S.C. 552(b)) of the proposed elimination of this exemption. All interested parties have had an opportunity to be heard through the filing of written comment in accordance with section 16 of the Act and the APA (5 U.S.C. 552(c)). Having provided the parties notice and opportunity for hearing, the Commission may properly terminate the exemption of joint policying agreements. Finally, no adequate reason not to terminate this exemption has been provided.

Comment 38 questions the rationale provided for terminating the exemption on joint policing agreements. As noted in the discussion of the Interim Rule, there are potential adverse effects on shippers resulting from a joint policing agreement. Joint policing arrangements may involve significant numbers of carriers and consequently may have a widespread effect on shippers utilizing these carriers. The Commission believes that these arrangements are significant enough to require that they be filed and reviewed.

Comment 38 argues that joint policing arrangements are beneficial in that they promote cost savings. Elimination of the exemption, however, will not destroy this benefit. The only result of terminating the exemption is to subject such arrangements to the Act's filing requirements. Given the fact that such arrangements need not be accompanied by elaborate information, and the relatively short waiting period before effectiveness, the burden of requiring that they be filed is minimal. This exemption therefore is terminated in the Final Rule. In light of the fact that this exemption is being terminated, it is unnecessary to address changes to section 572.308 suggested in the comments.

Section 572.309 Credit Information Agreements—Exemption.

Section 572.309 continued the 1916 Act exemption for credit information agreements only for the period of the Interim Rule. This exemption terminates thirty days after the issuance of the Final Rule, and thereafter, these agreements will be subject to the filing requirements of sections 4 and 5 of the Act and Part 572. Comment 33 supported the termination of the exemption for credit information agreements. Other comments (Comments 22, 24, 38, 39) urged that it be retained.

One misconception seems to be common to the comments opposed to termination of the exemption. The result of eliminating the exemption will not be to bar the formation of credit information agreements, but merely to require the parties to comply with the filing requirements. The filing requirements should not present a significant barrier to the formation of these agreements and the parties will be free to share credit information as they did under the 1916 Act.

Comments 24 and 38 take issue with the Commission's statement in the Supplemental Information that "credit is an important factor in price competition." Comment 24 maintains that this exemption does not authorize the collective pricing of credit. Comment 38 asserts that the limitation contained in § 572.309(c) barring the discussion of any matter which is required to be published in a tariff, ensures that these agreements will not result in antitrust abuses.

Credit information agreements must be filed because the distinction between the sharing of credit information and the collective formation of credit policy and pricing can easily become blurred. Accordingly, these agreements should be filed and reviewed in order to ensure that the directives of the Act are satisfied.

Similar to its position taken with respect to joint policing agreements, Comment 22 asserts that there is no requirement that credit information agreements be filed and that if the Commission wishes to terminate the exemption it must provide for additional notice and comment.

The Commission's position on this issue is the same as it is with respect to joint policing agreements. A credit information agreement is a "cooperative working arrangement", within the meaning of section 4(a)(5) of the Act, and therefore is an agreement within the scope of the Act. Consequently, the filing requirements of section 5 and Part 572 must be met. In addition, adequate notice and comment has been provided. The termination of the exemption was duly noticed in the **Federal Register** with the publication of the Interim Rule (49 FR 22301 (1984)). Parties were given an opportunity to comment and the Commission has considered these submissions in accordance with the provisions of the APA.

Comment 24 asserts that the authority to set credit terms is interstitial to collective ratemaking authority. Therefore, according to this Comment, the exemption for credit information agreements should be continued where the parties already have collective ratemaking authority.

Although the establishment of credit rules is interstitial to collective ratemaking authority, establishment of credit rules is not within the scope of activity permitted by a credit information agreement. The two activities are distinct. As mentioned earlier, the purpose of a credit information agreement is the sharing of credit information, not the formation of credit rules. The Commission recognizes, however, that the sharing of certain credit information is inherent in the process of forming collective credit rules. Therefore, where the parties already have collective ratemaking authority and wish to form a credit information agreement, depending on the contents of that agreement, they may already have all the authority they require and may not need an additional agreement.

Finally, Comment 24 maintains that the expiration of this exemption is contrary to the provisions of section 2(1) of the Act to achieve a regulatory system involving a "minimum of government intervention and regulatory costs."

The Commission disagrees. This is not an example of the agency arbitrarily increasing the regulatory burden upon parties subject to the Act. Credit information agreements are properly within the scope of the Act and their significance to price competition requires that they not be exempted from the filing requirements. Because this exemption is being terminated, it is unnecessary to discuss the various suggested modifications to this section.

Section 572.310 (redesignated § 572.306) Nonexclusive Transshipment Agreements-Exemption

Section 572.310 continues the exemption under the 1916 Act for nonexclusive transshipment agreements pursuant to section 16 of the 1984 Act. The exemption in the Interim Rule made a number of changes to the previous

exemption in 46 CFR Part 524. The requirements appearing at § 572.310(a)(2) and (3) were added to the definition of the agreements which fall within the exemption. The specific items which must appear in a tariff were generally retained in § 572.310(c). Section 572.310(d) replaced the former mandatory agreement language with a description of the required and permissive contents of such agreements.

Section 572.310(a) (redesignated § 572.306(a)). Comment 28 objects to the requirement in § 572.310(a)(2) which limits the class of exempt agreements to those which, among other things, do not "guarantee any particular volume of traffic or available capacity." Comment 28 explains that often when a publishing carrier solicits the participation of a connecting or feeder carrier in meeting the needs of a developing trade or carrying cargoes of opportunity, the connecting carrier does not have sufficient unused vessel capacity in place and is obliged to charter additional vessel capacity. The connecting carrier, however, may be reluctant to charter additional capacity unless the publishing carrier agrees to guarantee a minimum volume of cargo. In order to facilitate such arrangements, Comment 28 urges the deletion of the second disqualifying element in paragraph (a)(2).

This exemption indeed is intended to be limited to arrangements that do not guarantee any particular volume of traffic or available capacity. Agreements that contain such guarantees may have more anticompetitive consequences and are more akin to space charter arrangements and therefore are subject to all requirements applying to those arrangements. Accordingly, this suggested change is not made in the Final Rule.

Sections 572.310 (c), (d) and (e) (redesignated sections 572.306 (c), (d) and (e)). Comment 24 suggests that paragraphs (c)(2) and (d)(4) which refer to origin, transshipment and destination "ports" should be modified to make clear that such agreements can apply to intermodal cargo. Transshipment arrangements, by their nature, are limited to the all-water movement of cargo. The suggested change, therefore, is not appropriate. This does not in any way, however, preclude the filing of through intermodal rates by participants in such arrangements.

Comment 38 urges certain substantive modifications to §572.310 (c), (d) and (e) and a conforming technical change in § 572.310(b). Comment 38 would delete the reference to the required tariff provisions cited in § 572.310(b) and enumerated in § 572.310(c). This Comment believes that the tariff regulations are suffficient in this regard. Comment 38 states that making the filing of a tariff a condition to the existence of an exemption is logically inconsistent because there can be no tariff provision until the agreement is effective and no such agreement can be effective unless it is exempt. The provision of § 572.310(c) will be retained in the Final Rule. There would appear to be no harm in having these tariff items enumerated in this exemption section as well as in the tariff rules. Moreover, this is a condition which will only be complied with subsequent to the effectiveness of a nonexclusive transshipment agreement. The apparent dilemma posed by Comment 38 is artificial.

Finally, Comment 38 suggests that § 572.310 (d) and (e) be deleted as unnecessary restrictions on the commercial arrangements of agreement parties. Section 572.310(d) requires that nonexclusive transshipment agreements contain a declaration of the nonexclusive character of the arrangement and lists 13 permissible terms or specifications in such agreements. Section 572.310(e) states that no other subject other than those listed in § 572.310(d) shall be included in an exempted nonexclusive transshipment agreement.

The requirements of § 572.310 (d) and (e) shall be retained. Those provisions are necessary in order to ensure with some degree of specificity the exact parameters of the exemption. Only agreements which meet these requirements need not be subject to the usual filing and review. Parties that wish to have terms other than those permitted under the exemption may draft their agreements accordingly. Such agreements, however, will be subject to filing and review.

Subpart D—Filing and Form Agreements

Subpart D implements the filing requirements of section 5 of the Act. It establishes filing and form requirements, defines and establishes procedures for filing modifications of agreements and specifies those agreements which must be accompanied by an Information Form. Subpart D also provides for a waiver of certain form requirements upon a showing of good cause.

Section 572.401 Filing of Agreement.

Section 572.401 specifies the time and place for submitting an agreement, describes the contents of the transmittal letter, and provides that any agreement and accompanying Information Form which does not meet the requirements of filing shall be rejected in accordance with § 572.601.

Section 572.401(a) Several comments (Comments 1, 22, 24, 28, 34, 38) suggested changes in the filing specifications of § 572.401(a). Comment 38 states that this section should fully carry out the terms of the Act and should therefore provide for the filing of a complete memorandum which specifies the substance of any oral agreement subject to the Act. This suggestion has merit and is adopted. Section 572.401(a) now makes it clear that all agreements, including oral agreements reduced to writing in accordance with the Act, are subject to Part 572 and must be filed.

Comments 24, 28, and 38 contend that the requirement regarding authority to file is cumbersome or unnecessary. Comments 1 and 34 suggest that, consistent with 46 CFR 502.24, an attorney should be allowed to file without further statement of authority. The purpose of the authority to file requirement as set forth in the Interim Rule was to ensure that persons purporting to represent a group of principals did in fact have the authority to do so. There have been some instances in the past where the submissions tendered by parties allegedly on behalf of a group of principals were questionable representations of the intentions of the principals. In addition, there have been occasional failures under the Interim Rule and under predecessor agreement rules to provide verification of the authority to file. Upon inquiry, however, these deficiencies have been found to be an oversight or a technical failing and have been quickly remedied. In the case of a possible misrepresentation there appear to be sufficient safeguards (*e.g.*, public notice of filing and penalties for misrepresentation) in the Final Rule to protect against or remedy any serious filing abuse. Therefore, the requirement for specification of authority to file has been deleted in the Final Rule.

Comment 22 notes that § 572.401(a) does not distinguish between a "subscribing" and "filing" party. Comments 22 and 38 take exception to the reference in this section to the Information Form. Inasmuch as this section is not intended to address the requirements governing the execution (*i.e.* "subscription") of agreements or the required supporting documents (those matters being addressed at § 572.402(d) and Appendix A, Part IX(c)) no change has been made in response to these comments.

Finally, § 572.401(a) has been changed to require only an original and two

copies of the Information Form rather than 15 as in the Interim Rule, thereby alleviating the paperwork requirements for parties to agreements.

Section 572.401(b). Section 572.401(b) describes the contents of the transmittal letter which accompanies an agreement filing. Its purpose is to describe the minimum information that is necessary to assure the timely and proper receipt, acknowledgement, public notice and initiation of the review process associated with a filed agreement.

Comment 24 suggests that this section unnecessarily requires the repetition of the submitting party's address and telephone number beneath the letter signature when that information is already provided in the letterhead. An appropriate change has been made to eliminate repetition.

Comment 34 contends that this section should not require that the person executing the agreement and the person signing the transmittal letter be the same. In order to clarify § 572.401(b) in this respect, an appropriate change has been made.

Comment 38 suggests that this section be amended to make clear that the transmittal letter is "submitted" rather than "filed". An appropriate change has been made.

In addition to these changes, this section has been reorganized to more clearly set forth the contents of the transmittal letter.

Section 572.401(c). Section 572.401(c) provides that any agreement and accompanying Information Form which does not meet the requirements of filing shall be rejected in accordance with § 572.601. Comment 38 contends that the reference to the Information Form, and any filing deficiencies therein, as a basis for rejection of a filing exceeds the authority granted in section 6(b) of the Act. Comment 34 criticizes § 572.401(c) as an imprecise paraphrase of the statutory language and redundant of § 572.601 and urges its deletion.

The purpose of § 572.401(c) is to emphasize the consequences of failure to meet the submission requirements of the Act and Part 572, to include both those requirements applicable to the filed agreement itself and those applicable to any submissions required in support of that filing. The authority to include deficiencies in the Information Form as a basis for rejection is clearly provided in section 5(a) of the Act which empowers the Commission by regulation to prescribe the form and manner in which an agreement shall be filed and the additonal information and documents necessary to evaluate the agreement. Section 6(b) of the Act directs the rejection of any agreement that does not meet the requirements of section 5. The Information Form is, by the regulations of Part 572, part of the "requirements" referenced in section 5 of the Act and any substantive failure in its submission is a failure to meet the requirements of section 5 and, therefore, an appropriate basis for rejection. While § 572.401(c) does, to some extent, repeat the requirements expressed in § 572.601, early experience in the administration of the 1984 Act has shown a need for the additional cautionary emphasis. Section 572.401(c) is therefore retained without change.

Section 572.402 Form of Agreements.

Section 572.402 prescribes the form of agreements, with the exception of marine terminal and assessment agreements, filed with the Commission pursuant to section 5 of the Act. The provisions of this section were applicable to new and initial or replacement agreements filed on or after June 18, 1984. They were also made voluntarily applicable to modifications or restatements of agreements in effect before June 18, 1984 until such time as the Commission specifies a schedule for all governed agreements to be in conformity. The Commission's Interim Rule specifically solicited comments as to the compliance schedule to be established.

Comment 28 contends that the form requirements may be impractical and requests their voluntary application rather than their requirement. Comment 34 takes issue with the manner of page numbering specified at § 572.402(b) and the manner of page titling specified at § 572.402(c), stating that it would be preferable to begin the numbering of agreement pages with the first page after the required Title Page and Table of Contents. This Comment further submits that there is no basis for requiring an agreement to have both a "full" name and a "doing business as" name.

The purpose of § 572.402 is to establish a uniform format for agreements in order to facilitate: (1) Timely, accurate execution of the preliminary review imposed by section 6(b) of the Act and the substantive review and disposition directed generally by section 6 of the Act; (2) orderly maintenance and use of Commission records in support of the performance of its statutory obligations; and (3) eventual conversion of these records to a digitalized and/or micrographic form to enhance their cost effective use through computer assisted retrieval techniques. The brief experience under the Interim Rule has already served to demonstrate the utility of the new format in pursuing the first two of these objectives. Significant portions of the gains in processing efficiency can be directly attributed to this standardization.

With the eventual extension of these format requirements to all agreements, even greater economies may reasonably be expected. With respect to the numbering of the pages of an agreement, the division of an agreement into discretely numbered sections should enhance the efficiency with which an agreement can be compiled and maintained, and will improve the efficiency with which an agreement is utilized. As regards the matter of page titling, the purpose of this section is to avoid the identification problem that arises should the pages of a loose-leaf document become separated.

The Interim Rule requirement to use the agreement's "doing business as" name was primarily intended to minimize the space required to title the page because "dba" names are generally shorter than the full name. However, upon further consideration, we believe that it is preferable to require each page of an agreement to be titled with the name that appears on the Title Page and the Rule is modified accordingly.

The Supplementary Information to Interim Rule § 572.402 invited comment as to the time frames for making the format requirements of § 572.402 applicable to agreements existing prior to June 18, 1984. Comment 24 contends that the format requirements should not be made applicable to existing agreements prior to June 18, 1986. Comment 29 suggests a period of ninety days, presumably ninety days after publication of the Final Rule.

As indicated above, the Commission has already experienced significant benefit from the standardized format in terms of administrative efficiency in processing and reviewing agreements. The standardized format should also facilitate the implementation of the other record management initiatives discussed above. A fixed deadline for achieving compliance, however, might produce a crush of filings which would overtax the Commission's resources. Conformance to the format requirements therefore shall be achieved according to the following schedule: (1) All new agreements shall be submitted in the required format when initially filed; (2) any restatement of a previously effective agreement filed subsequent to December 15, 1984 shall be submitted in the required format; (3) any effective agreement which is modified to any degree and for whatever purpose subsequent to December 15, 1984 shall be restated in its entirety and filed in the

required format, including the modification; and (4) all other governed agreements not otherwise brought into compliance shall be conformed to the required format and filed with the Commission by not later than October 1, 1985. This schedule is set forth in § 572.402(h). Finally, we have amended § 572.402 to state that the form requirements do not apply to cancellations of agreements.

Section 572.403 Modification of Agreements.

Section 572.403 establishes requirements with respect to modifications to agreements. Section 572.403(a) indicates which modifications are so significant as to require an accompanying Information Form. Section 572.403(d) provides a procedure for indicating textual changes in agreements and § 572.403(g) prescribes a two-year republication requirement. The comments addressing each of these sections are discussed below.

Section 572.403(a). Section 572.403(a) defines significant modifications as those changes in an agreement that may result in a significant reduction in competition. Where the competitive consequences of an agreement modification are likely to be minor, the Information Form usually would not be required. For example, the addition of a single port to the geographic scope of an agreement would not be a significant modification, but the addition of an entire port range may have such a competitive impact as to be a significant modification. The June 12, 1984 amendment to the Interim Rule dropped the specification that the addition of members to a conference constitutes a significant modification. This amendment also added the word "significant" to changes in geographic scope, to reductions in service levels, and to changes in pool penalty provisions of carrying charges, where such changes would require the filing of the Information Form.

Nine comments address § 572.403. Comment 18 argues that for joint service agreements, the Information Form should only be required where the modification entailed the addition of new parties to the agreement, but not for the addition of ports or vessels.

A joint service agreement may result in a substantial reduction in competition when two or more existing carriers in a trade consolidate their otherwise competing service. Modifications to a joint service agreement that add vessels or extend the port coverage of the agreement are not likely to lead to a substantial reduction in competition, except where the expansion of port coverage includes ports currently served outside the joint service by two or more of the parties. Modification to a joint service agreement that increases the number of parties and, therefore, increases the potential market power of the joint service may have a substantial competitive impact on the trade and raise questions under the general standard. Consequently, the Commission is persuaded that significant modifications to a joint service agreement also include those that add parties to the agreement. An appropriate change is made in the Final Rule.

Comment 22 argues that the Commission is not authorized to require an Information Form either for the initial filing of any agreement or for a modification of an agreement. The Commission addresses the question of its authority to require an Information Form is the discussion of Appendix A.

Comment 26 argues that for conference agreements the only modifications that should require the submission of an Information Form would involve a substantial expansion of geographic scope. The requirement that an Information Form be filed with any modification that results in a "significant reduction in competition" is argued to be too broad and vague.

The Commission generally concurs that, as a practical matter, modifications of conference agreements, which do not add new authorities, will ordinarily only require the Information Form where they substantially increase the geographic scope of the agreement. This requirement is outlined in the Commission's June 12, 1984 amendment to the Interim Rule. However, if a conference agreement is amended to add or expand authority authorizing reductions in service, then such a modification would likely be viewed by the Commission as a significant modification requiring the submission of an Information Form.

The concerns raised by Comment 28 regarding § 572.403 are discussed under Appendix A.

Comment 30, in addition to arguing for the requirement that equal access agreements and modifications thereto be accompanied by an Information Form (an argument that has been addressed along with the concerns of Comment 28 under the Commission's discussion of Appendix A), also urges express reference to specific types of modifications that might result in a significant reduction in competition. These would include: changes in cargo categories and descriptions that result in significant increases in cargo that is subject to a pooling, equal access, joint service, or consortium agreement; significant increases in the cargo or revenue share of a national-flag line in a pooling or equal access agreement; or a significant decrease in the cargo or revenue shares of a third-flag line in a pooling or equal access agreement.

The purpose of requiring an Information Form with significant modifications is to obtain needed information in order to properly and adequately review such modifications under the general standard. The Commission has specified certain modifications that may result in a significant reduction in competition, thereby requiring an Information Form. The Commission has not attempted to provide a *comprehensive* list of all such modifications. Because a pooling agreement is viewed as potentially substantially anticompetitive, any modification to such an agreement that reduced competition would likely be a significant modification requiring the Information Form.

The modifications to a pooling agreement referred to by Comment 30 would also likely result in a significant reduction in competition. Accordingly, as a clarification, § 572.403(a) is amended to state that significant modifications also include "changes in cargo categories or descriptions that result in a significant increase in the amount of cargo subject to the pool, or changes in the allocation of cargo or revenue that significantly change the cargo or revenue shares of national or non-national flag lines."

Comment 30 also argues that the change effected by the June 12, 1984 amendment to the Interim Rule requiring the Information Form only for those modifications that result in "significant" changes in geographic scope, "significant" reductions in service levels and "significant" changes in penalty provisions allows the parties excessive discretion to determine what modifications are in fact "significant".

We do not agree. While parties to agreements are allowed some discretion, in the first instance, to determine which modifications to their agreements are significant, the Commission retains the option to request additional information from the parties under section 6(d) where the "modification" appears significant and the Information Form has not been filed. The Commission does not wish to impose burdensome filing requirements for each and every change regardless of its competitive significance. Parties should contact the Director, Bureau of Agreements and Trade Monitoring for advice as to whether or not a particular modification

requires the filing of an Information Form.

Comment 34 urges that amendments to conference agreements which add authority to establish through intermodal rates should not be considered significant modifications.

One of the objectives of the 1984 Act is to clarify regulatory authority concerning conference intermodal authority. The Conference Report explicitly states that "no special stigma should attach" to conference agreement amendments that establish intermodal authority. H.R. Report 98–600, 98th Cong., 2d Sess. 34 (1984). This does not mean, however, that conference intermodal amendments which extend the scope of price fixing agreements and raise concerns under the general standard should not be scrutinized. An Information Form, therefore, is required. This should not place an excessive burden on the parties because the market share information required in the Form applies only to the relevant trade(s) as determined by the parties. Market share data need not be provided for interior points to be served.

Comment 37 argues that the Commission has no authority to request an Information Form for any conference agreement or modification, and that, in any event, it should not require the Form where the modification solely provides for the addition of members.

The Commission rejects the argument that it has no authority to require an Information Form for reasons stated in its discussion of Appendix A. In regard to the second point, the Commission has, in its June 12, 1984 amendment, already deleted the requirement that a modification adding members to conferences be accompanied by an Information Form.

Comment 38 makes two technical suggestions. First, it is suggested that the second paragraph of the Instructions in Appendix A be conformed with § 572.403(a) (repeating the requirement that the Information Form is to be filed with significant modifications). Second, the Commission is urged to list in one place all agreements that require the Information Form. The first change is adopted. The second recommendation is not practicable, at least for significant modifications under § 572.403(a), because not all the modifications encompassing various combinations of authorities that will be filed can be anticipated. A filing party may contact the Director, Bureau of Agreements and Trade Monitoring for advice in this regard. For the purposes of an initial agreement filing, the Instructions specify that parties to all agreements, with the exception of marine terminal agreements, assessment agreements and agreements exempted from filing under Subpart C of Part 572, are required to file an Information Form in conjunction with the agreement.

Section 572.403(d). Section 572.403(d) establishes a mechanism for indicating textual changes in the language of an agreement. Comment 38 believes that the method of indicating changes is unnecessary and cumbersome. This comment suggests that parties should have the option of submitting separately, for information purposes, a copy of any agreement modification showing the deletions and new provisions.

Section 572.403(d) is intended to avoid any ambiguity as to what is being changed, deleted or added in an agreement and thereby facilitate the review of modifications to that agreement. This purpose may be equally achieved by the alternative method suggested by Comment 38. Section 572.403(d) therefore shall be amended to provide, as an alternative, for the informational filing of a page or pages indicating the proposed modification in the manner prescribed in sections § 572.403 (d)(1) and (d)(2).

Section 572.403(g). Section 572.403(g) requires the republication of an agreement under certain circumstances but exempts such republication from certain requirements of Part 572 when no substantive changes are involved. Comments 24 and 26 contend that the republication requirement is unnecessary and wasteful.

The purpose of § 572.403(g) is to provide for the periodic republication of the entire text of an agreement and to remove those portions of the agreement which have been deleted through prior modifications. Removal of obsolete language enhances the readability of the agreement. This section, however, has been amended so that the republication requirement applies only to those agreements which retain deleted language within the text of the agreement. Agreements which make changes by indicating the change on a separate page filed for information purposes, as provided for in § 572.403(d)(3), need not republish the entire agreement.

Section 572.404 Application for Waiver.

Section 572.404 provides for a waiver, upon a showing of good cause, of the form requirements of §§ 572.401, 572.402 and 572.403 and establishes the procedure and content for waiver requests. No comments were received on this section.

Upon further consideration, the Commission believes that the scope of § 572.404 should be enlarged to provide for a waiver, under appropriate circumstances, from the agreement organization and content requirements of §§ 572.501 and 572.502. There is a direct connection between § 572.402, on the one hand, and §§ 572.501 and 572.502, on the other. Any waiver associated, in particular, with § 572.402(e)(2) would almost certainly require relief from all or portions of §§ 572.501 and 572.502. This broadening of the waiver provision should not be interpreted as a lessening of the importance of these form and manner requirements. The purpose of expanding the waiver provision is to provide for the exceptional situation where some relief may be justified. Accordingly, § 572.404(a) is amended to include §§ 572.501 and 572.502 within the matters for which a waiver may be sought.

Section 572.405 Information Form.

Section 572.405 requires that a completed Information Form accompany certain agreements at the time of their filing. Complete responses are required for each item on the Information Form. Section 572.405(b) and the instructions to the Information Form require that, where the party is unable to provide a complete response, the party should provide either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain such information.

Because certain parts of the Information Form have been made voluntary or are only required to be completed for certain types of agreements, § 572.405(b) is amended to indicate that a complete response to the Information Form shall be supplied in accordance with the instructions. In addition, in order to relieve any paperwork burden on the parties and to enhance the ability of the Commission to protect the confidentiality of the Information Form, only an original and two copies of the Information Form are required to be filed.

Several comments object to the required explanation for noncompliance, including the use of estimates, as a basis for rejection of the agreement under § 572.601. Comment 37 questioned whether the Commission would use the explanation to reject the agreement on the basis of, for example, the accuracy of estimates or the adequacy of sources. Comment 39 suggests that, where explanations are "meritorious", they should be accepted.

In order to effectively and efficiently utilize the data provided on the Information Form, it is necessary for the Commission to assess the accuracy of such data. The identification of the sources of estimates allows the Commission to determine the extent to which such data should be incorporated in the analysis of the agreement. An explanation of why precise data are not available is required for certain parts of the Information Form in order to ensure that the parties make a reasonable attempt to provide data that is available to them. Available data, as addressed later in the discussions of Parts III and IV of the Information Form, are derived from data that the parties already have available, or would ordinarily acquire in the course of making the commercial decisions underlying the proposed agreement. The Commission has, however, deleted the requirement that an explanation of why precise data are not available accompany estimates in Parts III and IV, and the change is indicated in the relevant sections of the Final Rule. Reasonable explanations for the lack of availability of precise data will continue to be required for the remaining parts of the Information Form which require data and which are not voluntary. Where estimates are not provided, a statement of reasons for not providing estimates and the efforts made to obtain such information is required.

Six comments on § 572.405 address the issue of the Commission's authority to require the Information Form. Four comments took the position that the Commission does not have such authority under the Act. These comments are addressed in the discussion of §§ 572.401(c) and 572.601 and in the discussion of Appendix A—Information Form and Instructions.

Section 572.406 Complete and Definite Agreements.

Section 572.406 provides that any agreement filed under the Act and Part 572 shall be the complete agreement among the parties and shall specify in detail the substance of the understanding of the parties. This section provides that open-ended provisions will be permitted only if the enabling agreement indicates that any further agreement cannot go into effect unless filed and effective under the Act. Finally, this section describes matters which are interstitial to the basic agreement authority. Ten comments were filed in Docket No. 84–32 addressing this section.

The Supplementary Information to Docket No. 84–32 stated:

> The rule does not state how the Commission will treat an agreement that is not sufficiently specific, complete and definite. In most cases, such deficiencies could probably be corrected through informal discussions between the Commission's staff and the parties. An agreement which is severely deficient, however, may be rejected, investigated or subject to a formal request for additional information or to challenge in the court under section 11(h) of the Act.

A number of comments (Comments 101, 105, 106, 107, 108) objected to the discussion insofar as it suggested that an agreement which was severely deficient under the criteria of § 572.406 could be rejected. These Comments argue that the Commission does not have the authority to reject an agreement because it is unclear or indefinite. Such agreements allegedly may only be investigated, subjected to a request for additional information or challenged in court under section 11(h) of the Act. Comments 107 and 110 propose the addition of a new paragraph which would expressly limit the Commission's action on deficient agreements to such an investigation, an information request or an injunction.

As the Supplementary Information in the Interim Rule indicated, the Commission would in most cases seek to resolve deficiencies through informal negotiations and discussions between its staff and the parties. Rejection of an agreement would only occur in a rare case where an agreement is so severely deficient that, on its face, it could not be construed as complete and where even the most basic analysis under the general standard would not be possible. Moreover, in such a case, it would not be possible to determine whether sections 10(a)(2) and 10(a)(3) were complied with. Finally, agreements should be sufficiently precise and definite to determine whether a particular activity is within the scope of the antitrust immunity conferred upon them by section 7 of the Act. The fact that there are other avenues available for dealing with deficient agreements, as suggested, does preclude the use of rejection. Clearly, an informal resolution of such deficiencies is preferred. In other cases, requests for additional information, investigation, or court challenge under section 11(h) of the Act may be appropriate. However, where even the most minimal requirements with regard to definiteness and completeness are not met, rejection may be appropriate. The Commission does not believe that it is necessary to formally state the actions which might be available within the text of § 572.406.

Section 572.406(a). Section 572.406(a) states that a filed agreement shall be the complete agreement among the parties and shall specify in detail the substances of their understanding. Comments 102 supported this section as it appeared in the Interim Rule. Comment 105 urges that this section be eliminated or alternatively amended.

The Commission believes that § 572.406(a) adequately states the general rule that agreements must be complete and definite and this section remains unchanged in the Final Rule.

Section 572.406(b). Section 572.406(b) establishes guidelines concerning open-ended authority in agreements. Comment 102 supports this section in the Interim Rule. Comment 104 favors the elimination of this section but alternatively proposes certain modifications assuming that § 572.406(c) is not eliminated. Comment 105 considers § 572.406 (b) and (c) to be intertwined and proposes modifications to both sections.

Section 572.406(b) provides that agreement clauses which contain enabling authority expressly state that such authority may not be implemented unless the more specific implementing understanding or agreement is filed and effective under the Act. To that extent, this section merely states what the Act otherwise requires. Accordingly, § 572.406(b) is retained in the Final Rule. However, the phrase "open-ended or vague" is deleted.

Section 572.406(c). Section 572.406(c) is intended to provide a guideline regarding interstitial agreement authority. The comments were unanimous in expressing concern with this provision. A majority of comments favor the elimination of paragraph (c) from the Final Rule. Others, as an alternative, propose modification to eliminate phrases such as "routine and ordinary", "anticompetitive effect" and "routine operational". Some comments suggest that this paragraph would revive certain antitrust issues which were intended to be put to rest by the 1984 Act. Other comments suggest that it would erode the "reasonable basis to conclude" defense under section 7(a)(2) of the Act.

Section 572.406(c) is retained in the Final Rule but is amended along the lines suggested in several of the comments. The standard of this section is one that will be applied on an *ad hoc* basis and is not intended to preclude parties from taking interstitial action.

Subpart E—Content and Organization of Agreements

Subpart E provides for the standardization of the organization of an agreement, specifying the name, number,

and order of particular agreement articles.

Comment 38 argues that the requirements of Subpart E exceed the Commission's authority and should be deleted. Comment 34 urges that a period of at least six months subsequent to the adoption of the Final Rule be permitted to conform agreements to the requirements of Subpart E. Comment 28 suggests that the requirements of Subpart E may not be suitable for all agreements and that alternative formats should be permitted. Comment 39 urges that the Commission continue its policy of not specifying the language of agreement provisions. It also urges the Commission to reconsider making the requirements of Subpart E applicable to agreements which were approved prior to June 18, 1984. However, two conferences subscribing to Comment 39 did not object to Subpart E requirements provided that republication is not required prior to June 17, 1985.

The objectives of Subpart E are to: (1) Ensure that the text of an agreement contains the essential articles which are likely to appear in all agreements in a prescribed order; and (2) further support the standardization of agreement format and its associated goals and objectives as discussed above in connection with section 572.402. Nothing in the Act or its legislative history prohibits the Commission from establishing an orderly, minimum structure or organization for agreements filed with the Commission.

Upon consideration of the various proposed compliance schedules and available resources and obligations, the Commission has determined that a phased implementation schedule, both for §§ 572.402 and 572.403 and §§ 572.501 and 572.502, would minimize any burden by allowing up to ten months to achieve compliance. The elements required by § 572.501 are generally found in most agreements and provide the minimum information necessary for a general understanding of an agreement. These requirements, as revised below, shall continue for all agreements except cancellations, marine terminal agreements and assessment agreements. In the event that a waiver from these requirements is deemed necessary, § 572.404 has been expanded to permit application to be made for a waiver from the requirements of §§ 572.501 and 572.502.

Section 572.501 Agreement Provisions—Organization.

Section 572.501 provides a uniform organization for all agreements, except marine terminal agreements and assessment agreements.

Section 572.501(a). Section 572.501(a) imposes a minimum organization and subject matter outline on filed agreements (except for those which are exempted) and reserves the use of certain article numbers. Comment 29 contends that § 572.501(a) should be modified to provide that the content of a specified article is not required to be published unless that content has been commercially agreed to, contending that some of the articles do not otherwise ordinarily exist in some forms of agreements.

Section 572.501 (a) states that article numbers are reserved for the particular provision or authority as indicated in this section. Experience with agreements filed pursuant to the Interim Rule indicates that this statement has not clearly communicated its intended meaning. Some filing parties who perceive that they have no need for a particular article have simply omitted the subject matter of the article and assigned its number to another subject. Each of the articles enumerated in § 572.501 is generally found in nearly all types of agreements. The enumerated Articles 1 through 13 are reserved for the specified subject matter shown in §§ 572.501 and 572.502 and may not be used for any other subject or purpose, regardless of the type of agreement. Where an article is legitimately not applicable, as for example, a charter agreement which is not likely to have a neutral body policing provision, the article number and name is to either be omitted altogether or, to preserve the sense of the article numbering in the agreement, to be included in the text of the agreement followed by the word "None". Accordingly, appropriate revisions have been made in § 572.501(a) to clarify the use of the reserved article numbering system.

Section 572.501(b). Section 572.501(b) sets forth the specific order and describes generally the subject matter of the articles of an agreement.

Certain inquiries received by the Commission's staff suggest that some parties interpret the enumeration of Articles 1 through 13 in §§572.501 and 572.502 to mean that these articles are the only articles or subject matter which may be included in an agreement. Section 572.402(e)(2) clearly states that "any additional material provisions shall be set forth as consecutively number articles." Moreover, an agreement that contained only Articles 1 through 13 would in most instances not contain the full understanding between the agreement parties expressed in the filed agreement. In order to eliminate any further confusion, § 572.501(b) has been amended to state that additional articles required to express the complete understanding between the parties to the agreement and not otherwise incorporated in appendices to the agreement shall immediately follow the enumerated articles. Such articles shall be numbered consecutively commencing with Article 14.

Section 572.501(b)(1). Section 572.501(b)(1) requires the publication of the "full name of the agreement" in Article 1 of the agreement. Comment 34 suggests that the parties to an agreement be permitted to use an abbreviation, acronym, or "doing business as" name. We are not adopting this suggestion. Article 1 is the appropriate place in an agreement to identify that agreement by its complete legal name. We find this requirement to be administratively necessary and not to impose any particular burden on the agreement parties. It therefore shall be retained.

Section 572.501(b)(2). Section 572.501(b)(2) requires a statement of the "Purpose of the Agreement" in Article 2. Comment 34 contends that the elaboration on the meaning of the term "purpose" is unnecessary. While paragraph (b)(2) will be retained, because section 5(b)(1) of the Act requires an agreement to state its "purpose", the elaboration objected to is deleted.

Section 572.501(b)(3). Section 572.501(b)(3) requires the statement of the name, address and corporate/domicile nationality of each party to the agreement in Article 3.

Five comments (Comments 22, 24, 26, 34, 38) question the need for this requirement. Comments 26 and 38 contend that the requirement is burdensome and contrary to the Act and should be deleted. Comment 24 states that this section should be amended to avoid delays in the admission or resignation of agreement members. Comment 22 questions the relevance of stating the parties' nationality.

The purpose of § 572.501(b)(3) is to ensure that the Commission has accurate and current information with respect to the agreement's membership. The lack of such information has been a long-standing problem. It is not the purpose of this section, however, to unreasonably delay the effectiveness of changes in membership, to unnecessarily burden the agreement document itself, or to collect unneeded information. Therefore, appropriate changes have been made to § 572.501(b)(3) and to § 572.605 to provide for expedited review of modifications effecting change in conference membership.

Section 572.501(b)(4). Section 572.501(b)(4) requires a statement of the geographic scope in Article 4. Comment 34 states that agreement members do not necessarily serve their respective trades pursuant to the authority of an agreement and that the implication that they do so serve should be eliminated. It is not the purpose of § 572.501(b)(4) to capture any more than the geographic breadth of the basic agreement. Certain changes have therefore been made in this section.

Comment 28 states that § 572.501(b)(4), as well as § 572.501(b)(5), should expressly require consortium agreements to specify the level and scope of service; otherwise, such agreements may contain "open-ended" or "blank check" authority. The fundamental concern of this Comment, *i.e.* "open-ended authority", has been addressed in § 572.103(g) and § 572.406. As this concern would appear to be met by these sections of the Final Rule, the suggested modifications to § 572.501 (b)(4) or (b)(5) do not appear necessary.

Section 572.501(b)(5). Section 572.501(b)(5) requires in Article 5 a statement of the authorities permitted by the Act and intended to be exercised by the parties to the agreement. Comment 24 states that this requirement creates a risk that persons opposing an action taken pursuant to an agreement may argue that the only authority of the agreement is that stated in Article 5. This Comment suggests the addition of a statement that the parties' authority is to be derived from the entire agreement.

The purpose of Article 5 is to provide a general statement of the activities which the parties are authorized to engage in. Section 572.501(b)(5) has been revised to make this clear and that, except for the specification of fundamental matters, it will require that additional articles be provided which are more specific as to the authority to be exercised and the mechanics of that exercise. Finally, this section is revised to state that the parties may rely on the contents of the entire agreement as authority for their activities.

Section 572.501(b)(6). Section 572.501(b)(6) requires the titles and respective authorities of any agreement officials designated by the agreement parties be provided in Article 6.

Comment 38 contends that the requirements of § 572.501(b)(6) improperly prescribe substantive agreement content, exceed the authority of the Act and should be deleted. Comment 34 requests the clarification of the language and intent of the section with respect to the specification of agreement officials and their duties.

The purpose of § 572.501(b)(6) is to ensure that the Commission, the agreement parties and any other interested parties be informed as to who, by organizational title, is empowered to act on behalf of the agreement parties and in what capacity. This information is necessary to the effective and efficient administration of the Commission's agreement program, both with respect to the pre-effectiveness review of an agreement and the post-effectiveness monitoring of the activities of an agreement. It is not the purpose of this section, however, to unnecessarily delay the effectiveness of changes in such provisions or complicate the agreement document. Therefore, § 572.605 has been amended to provide for expedited review of modifications to Article 6.

Section 572.501(b)(7). Section 572.510(b)(7) requires that the terms and conditions of membership to the agreement be provided in Article 7. Comment 26 contends that this requirement is overly detailed and, in some cases, too trivial to be included in the basic agreement.

Section 572.501(b)(7) is an extension of the requirements of section 5(b)(2) of the Act which mandates that conference agreements provide reasonable and equal terms and conditions for conference membership. Of the nine required articles in § 572.501, it is the least likely to apply to all agreements. The requirements of § 572.501 would only apply to certain rate agreements and would not have application to transshipment, equipment interchange or charter agreements. Section 572.501(b)(7), therefore, has been revised to indicate that its provisions do not apply to certain agreements.

Section 572.502 Organization of Conference and Interconference Agreements.

Section 572.502 implements section 5(b) of the Act by requiring the inclusions of neutral body policing, prohibited acts, consultation, shippers' requests and complaints, and independent action provisions in conference and interconference agreements.

Section 572.502(a). Section 572.502(a) specifies the scope and application of the section with respect to conference agreements. Certain clarifying editorial changes have been made to the section. In addition the section has been revised to provide for the inclusion in agreements of provisions in addition to those prescribed in §§ 572.501 and 572.502.

Section 572.502(a)(1). Section 572.502(a)(1) requires a statement that at the request of an agreement member the conference shall engage the services of an independent neutral body. The section further requires the inclusion of any neutral body procedures established.

Seven comments (Comments 22, 25, 26, 27, 34, 35, 39) were received on this section. None of the Comments take exception to the requirement for an agreement to provide an affirmative statement that a single agreement member may request neutral body policing. However, some contend that there is no statutory authority for requiring that, once implemented, the neutral body policing procedures have to be incorporated into the text of the agreement. Of those, three propose that, if the procedures are required, they should be included in an appendix. It is also suggested this section use the term "self policing" rather than the term "independent neutral body" policing.

Section 572.502(a)(1) implements section 5(b)(4) of the Act which provides for "an independent neutral body" to police the obligations of a conference and its members, if requested by a member line. The section will therefore continue to refer to an "independent neutral body." The requirement that any neutral body policing procedures be included in the agreement derives from the general requirement that an agreement contain the full understanding of the parties. To the extent that these procedures reflect concerted action by the parties, they are part of the agreement and must be filed.

Section 572.605 is amended, however, to provide for expedited review of neutral body policing procedures, excluding any modification of the triggering provision stemming directly from section 5(b)(4) of the Act. Section 572.502(a)(1) is also modified to allow neutral body procedures to be included in a designated appendix to the agreement, which is cross-referenced in Article 10.

Section 572.502(a)(2). Section 572.502(a)(2) requires and affirmative statement that a conference will not engage in conduct prohibited by section 10(c)(1) or 10(c)(3) of the Act. Comment 33 requests that § 572.502(a)(2) be expanded to incorporate the prohibition on refusals to negotiate with shippers' associations contained in section 10(b)(13) of the Act.

Section 572.502(a)(2) implements section 5(b)(5) of the Act which, insofar as section 10 prohibited acts are concerned, requires conference agreements to expressly reference only those prohibitions specified in sections 10(c)(1) and 10(c)(3) of the Act. We note,

however, that section 10(c)(1) of the Act prohibits a conference from boycotting or taking any other concerted action resulting in an unreasonable refusal to deal. While not addressing itself directly to shippers' associations, the prohibition against boycotting and other concerted actions may encompass the concern of Comment 33. No change has been made to § 572.502(a)(2).

Section 572.502(a)(3). Section 572.502(a)(3) requires that conference agreements provide procedures for consultation with shippers and for handling of shippers' requests and complaints. Comment 33 suggests that § 572.502(a)(3) should prescribe minimum time frames and other procedures for the consideration of shippers' complaints and requests in a manner similar to that of the mandatory provisions of Subpart H.

Section 572.502(a)(3) implements section 5(b) (6) and (7) of the Act which require conference agreements to contain consultation and request/complaint handling procedures. The mandatory provisions of Subpart H, including § 572.801 (c) and (d), served the purpose of bringing agreements into compliance with section 5(b) of the Act during the transition period. As discussed more fully below in connection with the disposition of Subpart H, that purpose has been served and the Commission is removing the mandatory provisions of Subpart H from the Final Rule. At this time there does not appear to be a need to require parties to agreements to adopt Commission prescribed provisions. Provisions drafted by parties to agreements are carefully reviewed to ensure that they contain sufficient specificity and detail. Accordingly, the changes to this section suggested in Comment 33 are not adopted.

Section 572.502(a)(4). Section 572.502(a)(4) requires that conference agreements specify its independent action procedures. Comment 34 proposes that this section be revised to permit: (1) Independent action procedures which allow for the exercise of such action on less than 10 calendar days' notice; and (2) a conference member to independently elect to provide more than 10 calendar days' notice of its intention to exercise independent action.

Section 572.502(a)(4) tracks the language of section 5(b)(8) of the Act which, in relevant part, provides that conference agreement independent action provisions may not impose a notice period of "* * * more than 10 calendar days * * *" for the exercise of independent action. The revisions suggested by Comment 34 are unnecessary because their intended purpose is presently being served by § 572.502(a)(4). Therefore, no change to this section has been made.

Section 572.502(b). Section 572.502(b) requires every interconference agreement to contain independent action procedures (in addition to the enumerated Articles 1 through 12). Comment 24 contends that interconference agreements should not be required to contain the provisions of Articles 10, 11 and 12 specified in § 572.502(a).

Interconference agreements are generally types of conference agreements and, as such, should be subject to the same requirements. Therefore, the argument that the requirements of § 572.502(a) should not apply to interconference agreements is not persuasive and is rejected. However, a waiver of this requirement may be applied for pursuant to the new provisions of § 572.404. Such a waiver would be available where any or all of Articles 1 through 12 would not be applicable or appropriate given the particular interconference agreement. Finally, it should be noted that provisions which appeared in § 572.802 have been relocated in this section.

Subpart F—Action on Agreements

Subpart F implements section 6 of the Act which establishes procedures under which agreements are reviewed and acted upon by the Commission. The statutory model for review of agreements is the premerger clearance procedures set forth in the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (Pub. L. 94–435, 90 Stat. 1390). The procedures of Subpart F are intended to facilitate the expeditious review of agreements based on necessary and relevant information within the time allowed by the Act.

Section 572.601 Preliminary Review—Rejection of Agreements. Section 572.601(b) provides for the rejection of any agreement that fails to comply with the filing and information requirements of the Act and Part 572. Comments 13, 17, 38, and 39 question the Commission's authority to reject an agreement for failure to meet filing and format requirements. Comments 29, 34, and 38 specifically challenge the authority to reject an agreement after preliminary review, pursuant to § 572.601(a), on the ground that the Information Form is not submitted, or is incomplete and an adequate explanation is not provided. They argue that only a deficiency in the agreement itself provides the basis for rejection. According to these Comments, an incomplete Information Form lacking an adequate explanation should be remedied by a request for additional information.

Section 5(a) of the Act authorizes the Commission to prescribe the additional information that should accompany an agreement. These requirements are contained in § 572.405 pertaining to the Information Form. Section 6(b) of the Act provides for rejection of a submission which does not meet the requirements of section 5(a) of the Act. Section 572.601 implements this rejection authority. An agreement which is submitted with an incomplete Information Form, lacking an adequate explanation where required by § 572.405, fails to comply with § 572.405 and may be rejected. Moreover, the purpose of a request for additional information is not to obtain information which all parties are required to submit with an agreement in the first instance, but to acquire, in special circumstances, further information.

Comment 39 suggests that, before an agreement is rejected, the filing party should have an opportunity to correct any deficiencies within a specified time without suspending the 45-day waiting period. It is further proposed that this section be clarified to explain that agreements may only be rejected for nonconformance with technical filing requirements rather than for substantive deficiencies. Comment 39 also suggests that § 572.601(b) be amended to provide that rejection must occur within 20 days of filing and that, prior to rejection, the filing parties should be notified and given an opportunity to correct any deficiency. Finally, Comment 39 proposes that this section be amended to expressly provide for appeal to the Commission itself when an agreement is rejected.

Most of these concerns expressed in these comments are, as a practical matter, met under the existing Bureau of Agreements and Trade Monitoring procedures for processing agreements. Filing parties presently are given the opportunity to make minor corrections without suspending the 45-day waiting period. These corrections are usually speedily made because of their technical nature.

Every effort is made to review an agreement and accompanying Information Form for deficiencies as expeditiously as possible. In most situations this preliminary review is completed within a few days after the agreement's receipt at the Commission. In the case of particularly complex agreements, slightly more review time may be needed. A specific time period for rejection therefore does not appear

to be necessary or appropriate and could under certain circumstances, deny the Commission and the filing parties necessary flexibility.

As to Comment 39's concern about rejection for other than filing deficiencies, the nature of the preliminary review provided for in section 6(b) of the Act and § 572.601(a) makes clear that this rejection is not based on a substantive review of the agreement.

Decisions on rejection agreements are presently made by the Commission and not the staff. There is, therefore, no need to provide for an appeal procedure to the Commission because they have already considered the matter. If, in the future, this procedure is changed, then, at that time, it would be appropriate to consider an appeal mechanism to provide for Commission review.

Section 572.602 **Federal Register** *Notice.*

Section 572.602 implements section 6(a) of the Act which requires the Commission to transmit notice of the filing of an agreement to the **Federal Register** within seven days of receipt.

Section 572.602(a). Comment 38 suggests that the words "A notice of" be added at the beginning of § 572.602(a). This clarifying change is made in the Final Rule.

Section 572.602(b). Section 572.602(b) describes the contents of the notice to appear in the **Federal Register.** Comment 19 suggests the use of a standardized form of notice which would be completed and filed by the parties with the agreement. Present procedures appear to be adequate and little or no savings in time would appear to result from the suggested change. Accordingly, a standardized form for notice is not adopted.

Comments 24 and 28 suggest that the notice of the **Federal Register** identify the filing party. This suggestion has merit. This information is submitted with the agreement and its publication in the **Federal Register** would facilitate the effort of interested persons to communicate with the filing party. This section is amended accordingly.

Section 572.603 Comments.

Section 572.603 provides for comment by any interested person to an agreement and addresses the status and confidentiality of such comments.

Section 572.603(a). Section 572.603(a) allows third parties to submit comments to filed agreements. No limitations, except the response period indicated in the **Federal Register** notice, attach to the filing of such comments. Confidential treatment will be afforded comments where the commenter so requests and there exists a proper legal basis for nondisclosure.

This provision attracted a number of comments (Comments 19, 20, 24, 25, 26, 30, 34, 39) both supporting and opposing confidential treatment of third party comments. The majority of these (Comments 19, 20, 24, 25, 26, 34, 39) believe that confidentiality, where appropriate, for third party comments is contrary to the provisions of the Act. It is asserted that the disclosure exemptions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, are the exclusive avenue for withholding third party comments. Some comments (Comments 19, 20, 24, 34, 39) suggest that the filing parties be provided with copies of third party comments. This would allegedly ensure administrative efficiencies, avoid the filing and processing of FOIA requests, and allow the filing party the opportunity to confront adverse information. On the other hand, comment 30 submits that all information filed with an agreement, either by a filing party or third parties, is protected under section 6(j) of the Act. It is asserted that confidentiality for third party comments will encourage submission of more complete comments.

Comment 28 suggests that persons commenting on agreements be allowed to waive confidentiality and Comment 20 proposes that claims of confidentiality be supported by precise statutory grounds. Comment 20 further suggests that the parties be provided with all non-confidential comments. It is suggested that if complete confidentiality is claimed for all parts of a comment, notice of the filing and claimed exemptions be provided to the parties. Comment 20 requests that non-confidential oral communications with Commission staff by persons in opposition to an agreement be made publicly available.

Many of these comments misconstrue both this section and the Act. First, third party comments are not protected by the confidentiality provisions of section 6(j) of the Act. Only "information and documentary material filed with the Commission under section 5 or 6 is exempt from disclosure." 46 U.S.C. App. 1705(j). This information is solely provided by the filing parties. No mention is made in sections 5 and 6 of the Act of "information" to be submitted by third parties. Comments on agreements, however, may in appropriate circumstances be protected under the disclosure exemptions of FOIA (5 U.S.C. 552(b)(C)(1–7)), the Trade Secrets Act (18 U.S.C. 1905), or other similar statutes. Although third party comments are not protected under section 6(j) of the Act, it would be inappropriate and improper, particularly where a request for confidentiality has been received, to routinely make them available to the agreement parties, without prior Commission review.

Requiring commenting parties to provide the agreement parties with the non-confidential portions of comments, or notice (where the whole comment is claimed to be confidential), appears unnecessary. This information would be available from the Commission upon request. Nor do we believe this procedure, whereby non-privileged comments will be available from the Commission upon request, will lead to unnecessary FOIA requests. A FOIA request is not required to obtain clearly non-confidential information. It is properly used in close situations where the Commission and requested may differ on the confidentiality of certain information, and it accords the requesting party certain procedural and legal rights. Finally, it is both administratively burdensome and not required by law, to incorporate all oral comments into a publicly available written record.

As to the suggestion that agreement parties should be allowed to rebut comments, the Commission will provide the opportunity for rebuttal only where the comments become part of the record in a Commission or court proceeding. Prior to the institution of a proceeding not right of rebuttal is provided.

The Commission is adopting the recommendations of Comment 20 that all requests for confidentiality be accompanied by citation and explanation of relevant legal authority for withholding. In the event the Commission determines that it is proper to release information for which confidentialty has been claimed it will notify the submitter prior to such release.

Comment 38 suggests that the words "a written statement" in the first sentence of § 572.603(a) be changed to "written comments." This modification is also made in the Final Rule.

Section 572.603(b). Section 572.603(b) provides that filing of comments does not entitle a party to a Commission reply, institution of a proceeding, discussion of the comment in any Commission or court proceeding, or particpation in a proceeding.

Comment 34, while not taking issue with the substance of this paragraph, suggests that the Commission further limit all substantive communications regarding pending agreements between any third person and any Commission employee.

The body of law pertaining to *ex parte* communications only applies when a formal proceeding has been instituted and the Commission is acting as decisionmaker (5 U.S.C. 557(a)). The waiting period prior to the effective date of an agreement is not such a legal proceeding and no *ex parte* rights attach. In any formal proceeding involving an agreement the present Commission rules embodied at 46 CFR 502.11 and 502.61 appear sufficient. It is therefore is unnecessary to further provide for *ex parte* restrictions in this section.

Comment 28 states that the provisions of § 572.603(b), when read in conjunction with the rules on negotiations in § 572.609, flatly bar commenters from participating in negotiations. While Comment 28 recognizes that commenters have no *right* to participate in negotiations, it requests that the section be amended to allow such participation where appropriate. Comment 28 also proposes that the section be clarified to permit a commenter to engage in follow-up communications with the Commission at the Commission's discretion.

No change to § 572.603(b) will be made. The legislative history indicates that the role of third parties should be limited to submitting comments. Conf. Rept. No. 600, 98th Cong., 2d Sess. 31 (1984). Moreover, the involvement of third parties could complicate and delay the negotiation process by introducing irrelevant or parochial interests. However, the information provided in a comment may be considered by the Commission in the negotiation process. The Commission, however, does interpret the present language of § 572.603(b) and § 572.609 to permit follow-up communications between Commission staff and third party commenters.

Section 572.604 Waiting Period.

Section 572.604 sets forth technical provisions governing the statutory waiting period.

Section 572.604(b). Section 572.604(b) provides that, unless a request for additional information is made or a court order obtained, an agreement becomes effective 45 days after filing with the Commission or on the 30th day after publication in the **Federal Register**. Comment 28 proposes that the Commission publish a notice when it reaches a final determination on a filed agreement and that any commenters receive a copy of the determination.

Currently, the Commission issues a notice of an agreement becoming effective pursuant to section 6(c) of the Act. This notice is not published in the **Federal Register** but is available to the public in the Office of the Secretary. This procedure appears to be sufficient with respect to informing the public of the Commission's action. Accordingly, the suggested change is not adopted.

Section 572.604(c). Section 572.604(c) provides that the waiting period before an agreement becomes effective is suspended when the Commission makes an oral or written request for additional information. The waiting period resumes at the time of the receipt of the requested additional material or an adequate statement of the reasons for noncompliance.

Comment 38 urges the deletion of § 572.604(c) on the grounds that it is duplicative and less clear than similar provisions in section 572.606. A request for additional information is pertinent to this section because it has an effect on the waiting period before an agreement becomes effective. Paragraph (c) therefore is retained.

Comment 19 suggests that parties be notified within 15 days of receipt of an agreement if additional information will be needed. While the goal is to review all agreements expeditiously and, where necessary, notify parties as soon as possible of the need for additional information, a 15-day limit on requests would not allow sufficient flexibility in reviewing complex agreements.

Comment 39 proposes that the parties be allowed to request an extension or suspension of the waiting period. This procedure would be utilized where an agreement was particularly complex and additional time was needed for review or where negotiations were continuing between the parties and the Commission. Alternatively, Comment 39 proposes that the parties be allowed to postpone the waiting period by submitting amendments delaying the agreement's implementation date to a date beyond the 45-day statutory period.

We believe that it would be contrary to the provisions of the Act to extend the waiting period for other than a request for additional information or court order. The parties are also always free to include within the terms of the agreement a date for implementation subsequent to the expiration of the 45-day waiting period to defer implementation of the agreement, or to withdraw the agreement altogether without prejudice to refiling.

Several comments (Comments 22, 27, 34, 39) urge that the procedures for requests for additional information be clarified. Comments 27 and 39 are concerned that routine communications between Commission staff and the agreement parties may be misconstrued as a request for additional information. Similarly, Comment 34 suggests that confusion could be avoided by having one Commission official, preferably the Secretary, responsible for issuing requests for additional information. The Comment also proposes that this section be amended to require a specific authorization statement from an appropriate Commission official to accompany each request which would expressly identify the communication as a request for additional information.

Comments 22, 27 and 34 maintain that oral requests for additional information may be problematic. It is argued that the seven-day period for written confirmation of oral requests is too long. The concern is that the parties might not receive written confirmation of an oral request for additional information made after the 38th day of the waiting period until after they had begun to implement the agreement. Comments 22 and 27 suggest abandonment of the use of oral requests and Comment 34 proposes that an oral request be made only simultaneously or subsequent to the mailing of the written request.

The present procedures contained in § 572.604(c) governing requests for additional information appear adequate. When either an oral or written request for additional information is made, it will be unambiguously identified. There is no need either to have only one official make the request or to include a specific authorization statement. In any situation where an oral request is intended to suspend the effective date of an agreement, that fact will be made clear to the filing parties.

Comment 24 argues that the resumption of the waiting period begins automatically after filing of the response to the request, or submission of the statement of noncompliance. This Comment argues that the Commission has no authority to evaluate the adequacy of the response and only the United States District Court for the District of Columbia can further suspend the waiting period. The Commission did not intend the language "*adequate*" statement of reasons for noncompliance to affect the resumption of the running of the waiting period. We have adopted the suggested change and the word "adequate" has been deleted.

Section 572.605 Request for Expedited Approval.

Section 572.605 implements section 6 of the Act and sets forth grounds and procedures for applying for and granting expedited approval.

Comment 39 proposes that § 572.605 be amended to permit parties to request expedited approval after filing a

response to a request for additional information under the same procedures for expedited approval otherwise applying.

The Commission concurs with this suggestion. It is clearly proper under section 6(e) of the Act to consider expedited approval for agreements whose effective date is suspended by the filing of a request for additional information. An appropriate modification has been made in § 572.605 of the Final Rule.

The Commission is also adding a new paragraph (c) to this section to provide for expedited approval of cancellations of agreements and modifications which reflect changes in conference membership, officials of the agreement, and neutral body authority and procedures. This addresses the desire expressed in comments that these matters be effectuated without unnecessary delay. The Commission will consider the institution of a separate proceeding to exempt these categories of agreements from the waiting period requirements of section 5 of the Act and allow them to become effective upon filing. However, given the notice requirements of section 16 of the Act, that relief cannot be granted within the scope of this proceeding.

Section 572.606 Requests for Additional Information.

Section 572.606 implements section 6(d) of the Act which authorizes requests for additional information.

Section 572.606(a) and (c). Section 572.606(a) provides that the Commission may request additional information, prior to the expiration of the waiting period. When a full response is not supplied, the filing party must submit a statement of reasons for noncompliance.

Section 572.606(c) provides that a request for additional information may be made orally or in writing, but when made orally, written confirmation will be mailed within seven days of the request.

Comment 26 proposes that this action be amended to provide a statement that the Commission will attempt to make requests for additional information early in the waiting period. Only in exceptional circumstances would requests be made in the final days prior to the effective date.

There is no need to amend paragraph (a) as suggested. All requests for additional information will be made as promptly as possible. Of course, the timing of such requests will necessarily vary with the complexity of the agreement.

Several comments (Comments 22, 24, 27, 38) objected to the use of oral requests for supplementary information. The comments express concern with the ambiguities associated with oral requests, particularly when the request is made in the last days prior to the effective date and the parties are making plans to implement the agreement. Comments 22 and 24 submit that the parties are entitled to the certainty of a written request which would be addressed to specific, relevant and readily available material and be specifically identified. Comment 24 suggests that an oral request for additional information only be permitted if written confirmation is received prior to the 45th day of the waiting period.

Section 6(c) of the Act does not require requests for additional information or documentary matter under section 6(c)(2) to be made in writing. It only requires that they are made within the 45-day period. The Commission therefore retains the option to use oral requests followed by written confirmation for further information. When an oral request for additional information is issued the Commission will, as a matter of course, advise the parties of the consequences of this procedure. In the unlikely event parties are unsure of the nature of an oral request for further information, prior to receipt of written confirmation, they may contact the Director, Bureau of Agreements and Trade Monitoring for clarification.

Section 572.606(d). Section 572.606(d) provides that the Commission will specify a reasonable period for a party to reply to a request for additional information.

Comments 24 and 27 assert that the Commission does not have the authority to set a time limit for response. They submit that there is no burden on the Commission until the information is supplied and, therefore, the Commission should not be concerned when, if ever, the information is supplied. They propose that § 572.606(d) be deleted.

The purpose of providing for a reasonable period to respond is to conserve the Commission's resources. Once the Commission undertakes the review of a filed agreement it is beneficial to complete the review process and not have filed agreements pending indefinitely while awaiting responses to requests. This provision is necessary to maintain the orderly management of the agreement review process. In all cases, parties will be provided ample time in which to respond. Parties may always petition for more time, if necessary.

Section 572.606(e). Section 572.606(e) is added to the Final Rule to provide for notice to commenting parties of a request for additional information. The purpose to this provision is to allow for further comment.

Section 572.607 Failure to Comply With Requests for Additional Information.

Section 572.607 implements section 6(i) of the Act which authorizes the Commission to seek court enforcement of its information requests.

Section 572.607(a). Section 572.607(a) of the Interim Rule provides that a failure to comply results "when the party responsible for filing the request" fails to substantially respond. Comment 34 suggests that the reference should be to "a person filing an agreement, or an officer, director, partner, agent or employee thereof." This suggestion would clarify this section and has been adopted.

Comment 24 suggests that the word "satisfactory" be deleted on the ground that if a statement of reason for noncompliance is submitted only a court can evaluate its acceptability.

When the Commission believes a statement of reasons for noncompliance is inadequate it may bring an action in court pursuant to section 6(c)(2)(B) of the Act. The court's function will be to evaluate the sufficiency of the statement of reasons for noncompliance and take appropriate remedial action. This section is not intended to supplant the court's function. This suggested change, however, is not necessary.

Comments 27 and 34 assert that the Commission is not authorized to prescribe a period of time for reply to requests for additional information and thus cannot, pursuant to § 572.607(a), deem that a failure to reply has resulted when a response is not received within that time period. Comment 34 maintains that the only applicable time period is that provided for in section 6(c) of the Act.

These arguments are not convincing. The time periods provided for in section 6(c) of the Act only apply after a response has been received. They do not pertain to the period between the request and the response. As indicated with respect to § 572.606(d) above, the establishment of a time period for response to a request for additional information is necessary to the orderly administration of the agreements program. This does not mean, however, that the Commission will bring a court action pursuant to section 6(i) of the Act when no information has been filed, thereby compelling the parties to file a response and start the running of the waiting period on an agreement they may prefer to withdraw. Finally, where

the parties have filed a response to a request for information which is inadequate, the Commission may bring an action pursuant to section 6(i) to compel a more responsive reply and extend the waiting period.

Section 572.607(b). Section 572.607(b) implements the provisions of section 6(i) of the Act which permits the Commission to bring an action in District Court where there has been a failure to substantially comply with a request for additional information.

Comment 24 would remove the word "where" from the first sentence of this section and substitute the words "when it considers that". Comment 24 seeks a clarification that the Commission is not asserting authority reserved for a court under section 6(i) of the Act.

Before the Commission brings an action pursuant to section 6(i) of the Act it must first reach its own finding on the substantiality of a reply to a request for additional information. This finding does not substitute for the court's determination of the adequacy of the reply. To clarify the Commission's function, the recommended change in language has been made.

Section 527.608 Confidentiality of Submitted Material.

Section 572.608 implements section 6(j) of the Act which provides that all information submitted by a filing party other than the agreement itself shall be exempt from disclosure under the FOIA.

Section 572.608(a). Section 572.608(a) provides a general grant of confidentiality to the filing parties for all information submitted to the Commission and lists particular categories of protected information including the Information Form, voluntary submissions of additional information, reasons for noncompliance, and replies to requests for additional information.

Comment 30, consistent with its recommendations concerning § 572.603 pertaining to comments from third parties, suggests that confidentiality be extended to third parties who submit information. Comment 30 submits that nondisclosure will encourage better quality and more detailed comment.

As indicated above, the Commission does not have authority under the 1984 Act to exempt third party comments from disclosure except in conformance with FOIA and the Trade Secrets Act.

Section 572.608(b). Section 572.608(b) provides for the statutory exception to the overall policy of nondisclosure of information submitted by parties filing an agreement. Such information may be disclosed in an administrative or judicial proceeding or in response to a proper request from Congress.

Comment 24 suggests a change in § 572.608(b)(1) by adding the phrase "but only if disclosure takes place in the course of such proceedings" after the words "relevant to". The purpose of the change is to allow information to be released only in the course of a proceeding and not just where that information may be "relevant" to that proceeding.

The language which Comment 24 objects to, "relevant to . . . administrative or judicial proceeding", is adopted verbatim from section 6(j) of the Act. In order to preserve the full scope of this statutory provision, no change in section 572.608(b) is made.

Section 572.608(c). Comment 28 suggests that this section be amended to allow a filing party to waive nondisclosure. Although the Commission itself may not disclose information filed by the parties to an agreement, the parties themselves are not bound by the provisions of section 6(j) of the Act. This section therefore has been amended to add a new paragraph (c) which expressly recognizes the parties' right to make a voluntary disclosure. The rule requires, however, that parties making such a disclosure promptly inform the Commission of their action.

Section 572.609 Negotiations.

Section 572.609 makes clear that the negotiation process may take place at any time after the filing of an agreement up to the conclusion of an injunctive proceeding. The negotiation process will thus be available throughout the pendency of an agreement to resolve differences over an agreement. The negotiation process is limited to the filing party and Commission personnel. Shippers, other government departments or agencies, and other third parties may not participate in negotiations.

The most significant issues concerning this section focus on whether a modification which is the result of negotiations must be published in the **Federal Register**, and the proper role of third parties in the negotiation process. Comment 28 submits that modifications which expand the parties' authority must be published in the **Federal Register**. Comment 26 takes the opposite view and further asserts that the waiting period should not be suspended.

It is unlikely that, as a result of negotiations, an agreement's authority would be expanded. However, in the event that expansion of authority does result from the negotiations, the agreement would be subject to filing as a new agreement pursuant to section 5 of the Act and the provisions of this part. Notice of the filing of the new agreement would therefore be published in the **Federal Register**, pursuant to § 572.602, provided it was not rejected for filing or technical deficiencies.

Comment 39 supports the present version of § 572.609 and notes that third parties are properly excluded from negotiations. Conversely, Comment 28 maintains that third parties should not be flatly barred from involvement in negotiations. The issue of involvement of third parties in negotiations has already been discussed in connection with § 572.603(b). No changes are warranted.

Finally, Comment 24 suggests a change in § 572.609 to clarify that negotiations concerning injunctive proceedings pertain exclusively to injunctions brought pursuant to section 6(h) of the Act.

Because negotiations pursuant to § 572.609 are not intended to be limited to section 6(h) injunctions, the suggested change has not been made. The Commission is not only authorized to seek injunctive relief pursuant to section 6(h) of the Act for violation of the general standard but also pursuant to section 6(i) for failure to substantially comply with a request for additional information and section 11(h) for actions in violation of the Act.

Subpart G of the Rules—Reporting and Record Retention Requirements

Subpart G contains rules which implement the reporting and record retention provisions of the Act. Its purpose is to ensure that the Commission has sufficient information to adequately monitor the concerted activities of regulated parties.

A number of comments object to the reporting and recordkeeping requirements of Subpart G. They object to the broadened definition of "meeting" for which minutes are required, the identification of documents circulated to the members in connection with meetings and the filing of an index on a quarterly basis of all documents distributed to the members and not otherwise filed with the Commission. These comments contend that, in many instances, the list of documents would be massive, and that to require their filing would be an unwarranted intrusion on due process rights. These requirements are said to be an undue and unreasonable burden upon the industry and to be contrary to the legislative intent of the 1984 Act.

It is clear that Congress intended a law which would enable the ocean shipping industry to fashion agreements

in a manner which meets their commercial needs and to have such agreements become effective within a relatively short period, unless there is an indication that such agreements might be contrary to the standard set forth in section 6(g) of the Act. However, it is also clear that Congress intended that the Commission maintain a degree of surveillance over the concerted activities of ocean common carriers and marine terminal operators, adequate to ensure that they do not violate the standards and prohibitions set forth in the Act and that they comply with the mandatory provisions expressly set forth therein. This imposes a greater rather than a lesser surveillance responsibility on the Commission, when compared with the provisions of the 1916 Act.

Upon consideration of the comments submitted and reevaluation of its information needs, the Commission has made several revisions to its Final Rule which relax the record reporting and retention requirements. The Final Rule requires the filing of minutes on the same basis as minutes were required under 46 CFR 537.3 of the former regulations, namely for meetings where the parties are authorized to take final action as opposed to being authorized to take any action. The requirement that the minutes specify any documents distributed to inform or assist the members is deleted. In addition, the index of documents requirement is being modified to include only those documents which are circulated to members and used to reach a final decision on specified matters.

These amendments strike a balance between the enhanced freedom the ocean shipping industry enjoys and the need to ensure that the Commission has the information needed to fulfill its responsibilities under the 1984 Act.

Several comments (Comments 16, 17, 22, 34) allege that the information collection requirements of Subpart G violate the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). The United States Office of Management and Budget (OMB) is charged with the responsibility of reviewing agency regulations for compliance with the Paperwork Reduction Act. The Commission has followed the proper procedures for clearance of Part 572 by OMB. The collection of information requirements contained in this part have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act and have been assigned an OMB control number. *See* § 572.991.

Comment 28 contends that consortium agreements should be included within the coverage of Subpart G and subjected to reporting and indexing requirements. Many consortia and joint service agreements are by their own terms required to submit reports. The addition of such agreements within the coverage of Subpart G would appear to be beyond the scope of this rulemaking proceeding. Should there develop a need to obtain such information in order to effectively monitor consortia, then the Commission will consider an appropriate amendment to this subpart at that time.

Section 572.701 General Requirements.

Section 572.701 contains certain general requirements which apply to all reports required by this subpart.

Section 572.701(b)—Serial Numbers of Reports. Section 572.701(b) provides that each filed report should be assigned a serial number. Comments 13 and 34 state that the serial numbering system should be made optional and that conferences should be allowed to continue to use their established numbered minute systems. It was not the purpose of this requirement to impose a precise numbering system but rather to establish a system for identifying minutes which might be missing. Accordingly, this section is being amended to add a provision which allows any conference or rate agreement which has its own sequential numbering system to continue to use that system in lieu of the system set forth in this section.

Section 572.701(c)—Retention of Records. Section 572.701(c) provides that a copy of each document referenced in the index of documents submitted pursuant to § 572.704 must be retained by the parties for a period of three years and be made available to the Commission upon request. As indicated below, the volume of documents required to be indexed has been substantially reduced. However, the retention of documents is of such importance for surveillance purposes that this requirement shall be retained without change in the Final Rule.

Three comments (Comments 13, 34, 39) object to the provision in this section which states that the Commission may obtain documents upon written request. This objection similarly pertains to § 572.701(d) which also states that documents shall be made available upon request. The comments maintain that the judicial precedent pertaining to section 21(a) of the 1916 Act (46 U.S.C. app. 820), which is similar to section 15(a) of the 1984 Act (46 U.S.C. app. 814), and forms the basis for this subpart, should be followed.

The procedures used for requests for documents under the 1916 Act will be continued and, in situations pertaining to issuance of a request for documents pursuant to § 572.701 (c) and (d), the Commission will state its basis for seeking the documents.

Section 572.701(d). Section 572.701(d) provides that the Director, Bureau of Agreements and Trade Monitoring may request that documents be furnished within a specified time. These documents will be received in confidence.

Comments 13, 22, and 34 maintain that the requirement that documents must be produced upon request is contrary to due process of law. They submit that parties should be permitted an opportunity to oppose the request. Comment 39 maintains that this record production requirement constitutes an unreasonable search and seizure. This objection is without merit. Notice and opportunity for hearing are not a prerequisite to issuance of a request for documents pursuant to section 572.701(d). *Montship Lines, Ltd.* v. *Federal Maritime Board,* 295 F.2d 147 (D.C. Cir. 1961).

Comment 26 objects to the fact that the Director, Bureau of Agreements and Trade Monitoring issues a request for documents. It is urged that the former procedures, applying to section 21(a) of the 1916 Act, under which the Commission itself issued the request for documents, be continued. No modification to this section is necessary. Requests for documents made by the Director may be appealed to the Commission.

Finally, Comment 34 points out that privileged documents such as attorney-client communications are not exempted from the scope of a request for documents. There is, however, no need to amend this section to specifically exclude information which may already be protected by law.

Section 572.701(e). Section 572.701 (e) specifies times when documents must be filed, one of which is after the issueance of a request for documents, Comment 34 refers to its objections pertaining to § 572.701 (c) and (d) and asserts that this section should be deleted. These concerns have already been addressed above and no change is required in this section.

Section 572.702 Filing of Reports Related to Shippers' Requests and Complaints and Consultations.

Section 572.702 further implements section 5(b) of the Act which requires conferences to provide for a consultation process and to establish procedures for considering shippers' requests and complaints.

Section 572.702(a)—Shippers' Requests and Complaints. Section 572.702(a) provides that conferences shall annually file with the Commission a statistical report summarizing activity in several areas pertaining to shippers' requests and complaints. Comment 33 suggests that these reports should identify shippers' associations requests separately from those of individual shipper requests. This change is said to be necessary so that the Commission may carry out its responsibilities to administer and enforce section 10(b)(13) of the Act, which prohibits common carriers from refusing to negotiate with a shippers' association. Comment 27, on the other hand, contends that reports on the number of shipper complaints is unnecessary.

The contents of reports required under this section has been kept to a minimum. Only statistical totals without specific details are required. However, these statistics are important to determine the degree of conference responsiveness to sections 5(b), (6) and (7) as well as to section 10(b)(13) of the Act. With regard to section 10(b)(13) it would be useful to have the statistical reports separately indicate shippers' associations or groups and § 572.702(a) has been amended accordingly in the Final Rule.

Section 572.702(b)—Consultations. Section 572.702(b) requires each conference to file an annual report setting forth a statistical summary of the number of consultations requested and conducted during the calendar year. Several of the comments already discussed in connection with § 572.702(a) make similar arguments with regard to this section. Comment 33 believes that this section also should provide for the separate compilation of statistics on consultations with shippers' associations. Comment 27 argues that this section is unnecessary. Comment 24 contends that the requirement to report on consultations should be eliminated because it will not produce any meaningful information and because it is contrary to the statutory goal of minimizing government intervention.

The reports required by § 572.702(a) are necessary and useful statistical information on the responsiveness of conferences to shippers' concerns which would enable the Commission to determine whether a closer scrutiny of conference consultation activities might be warranted. This section is, however, modified in the Final Rules as was § 572.702(a) to require that reports separately identify shippers' associations and shippers' groups.

Section 572.703 Filing of Minutes.

Section 572.703 defines the term "meeting" and requires certain types of agreements to file minutes of meetings. Certain matters, such as purely administrative discussion, are exempt from the filing requirements of this section.

Section 572.703(a)—Meetings. Section 572.703(a) defines "meetings" within the meaning of this section. It was initially considered desirable to have minutes of all meetings regardless of whether final action was contemplated. Upon further consideration and in light of the comments received, there would appear to be no need to require the submission of minutes of meetings which do not contemplate the taking of final action.

Therefore, this section is amended to provide that minutes need only be provided for meetings which authorize the taking of final action. This modification, in effect, continues the previous requirements under the 1916 Act. This amendment should satisfy the concerns of those comments (Comments 13, 25, 26, 34, 38, 39) which argued that the proposed definition of a "meeting" was too broad.

Section 572.703(b)—Content of Minutes. Section 572.703(b) of the Interim Rule required that the minutes identify all documents distributed at the meeting to inform or assist the members. This requirement is deleted from the Final Rule and the Commission will rely primarily on the index of documents required by § 572.704. This change should meet the concern of those comments (Comments 17, 24, 25, 26, 29, 34, 38, 39) objecting to the minutes content requirement in the Interim Rule.

Comment 29 states that the minutes requirement should not apply to meetings of pooling and equal access agreements in this section. This would have the effect of eliminating not only the minute filing requirements for such agreements but all reporting and record keeping requirements under Subpart G. Comment 38 states that the references to pooling, equal access and discussion agreements should be deleted.

Adequate surveillance under the 1984 Act is of particular importance with respect to pooling and equal access agreements. Therefore, it is necessary to obtain minutes from the parties to such agreements as part of that surveillance program. Final action taken by members of discussion agreements may also have significance for a particular trade. Therefore, the reference to pooling, equal access and discussion is retained in the Final Rule.

Section 572.704 Index of Documents.

Section 572.704 requires that agreements covered in §572.703(a) index all documents which are distributed. Section 572.704(b) further requires this index to be filed with the Commission on a quarterly basis.

This section evoked considerable comment. Nine comments were received in objection (Comments 13, 16, 17, 25, 26, 29, 34, 38, 39). Seven of these comments (Comments 13, 16, 17, 26, 34, 38, 39) urge that the indexing requirement be deleted because it is unduly burdensome, unclear in its application, and contrary to one of the purposes of the Act, namely minimizing of government regulation. Comment 25 objected to the index but in the alternative suggested that, if retained, the Commission eliminate the double reporting of documents which must be identified in conference minutes and which also must be indexed.

The index requirement is modified to include only documents leading to final decision on specified matters. This should reduce the volume of materials to be indexed and limit the indexed documents to those which have substantial regulatory significance. The concern about double reporting expressed by Comment 25 has been addressed by eliminating the requirement in § 572.703(b) that minutes identify documents which are distributed.

Comment 29 requests that pooling and equal access agreements be permitted to submit, in lieu of the index, periodic and final accounting statements.

The requirement that pooling and equal access agreements must, where applicable, submit an index of documents distributed to members is retained. Accounting statements are not the equivalent of, or a substitute for, indexing of documents. The specificity of a document index is necessary to fulfill monitoring responsibilities under the Act. Parties need only identify the documents, not furnish the documents themselves, unless specifically requested.

Section 572.705 Waiver of Reporting and Record Retention.

Section 572.705 provides for a waiver of any provision of Subpart G upon a showing of good cause. No comments were received on this section and no substantive changes have been made to this section in the Final Rule.

Subpart H—Transitional Rules

Subpart H of the Interim Rule prescribes mandatory provisions in existing conference and interconference

agreements and addresses expiration dates in existing agreements. As discussed more fully below, the mandatory provisions in § 572.801 are deleted from the Final Rule. Those portions of §§ 572.802 and 572.803 which have a continuing purpose are transferred to other subparts of Part 572. All of the sections of Subpart H are therefore either deleted or relocated and the Subpart H designation shall be reserved for possible future use.

Section 572.801 Mandatory Provisions In Existing Conference Agreements

The purpose of § 572.801 was to facilitate the transition from regulation of agreements under the 1916 Act to the regulatory regime of the 1984 Act. In particular, it was important during the transitional phase to establish a mechanism to achieve compliance with section 5(b) of the Act on or before June 18, 1984, the effective date of the Act. To this end, the Commission required that conferences indicate their adoption of certain mandatory provisions set forth in § 572.801. This procedure worked to assure that conference agreements achieve compliance with section 5(b) of the Act.[4] Because the purpose of this section has been achieved, there is no need to retain it in the Final Rule.

Conferences have been permitted to draft their own amendments to supersede the Commission prescribed provisions and to comply with the statutorily mandated requirements. This procedure is continued in the Final Rule. Because this section is being deleted, there is generally no need to address the comments (Comments 22, 30, 31, 38) which proposed specific changes to this section. One comment, however, does merit further discussion at this time.

This U.S. Department of Justice (DOJ) submitted an extensive comment which focused on the right of independent action under section 5(b)(8) of the Act. DOJ contends that the model independent action provision contained in § 572.801(e) of the Interim Rule should be strengthened and made mandatory for all conference agreements in order to ensure that independent action fulfills its purpose under the 1984 Act. Moreover, DOJ urges the Commission, by rule, to expressly prohibit: (1) All collusion among carriers concerning any carrier's decision to exercise or not exercise its right of independent action; (2) the imposition of procedural barriers on the right of independent action; and (3) acts of retaliation against carriers who exercise their right of independent action. To that end, DOJ's comment includes a proposed model conference agreement independent action clause which contains extensive safeguards for the exercise of independent action.

DOJ's proposal is not adopted in the Final Rule. First, this proposal is so far reaching as to be clearly beyond the scope of the current rulemaking proceeding. A separate rulemaking proceeding would be necessary with full opportunity for comment before such a comprehensive rule could be adopted. Second, there is no factual record to provide a basis for the DOJ proposal. Unlike the situation in the motor carrier industry cited by DOJ, where the Interstate Commerce Commission imposed procedures for independent action after it found that the statute was being frustrated, the Commission has only limited experience with independent action under the 1984 Act. At this time, the Commission believes that conferences should be free to draft their own independent action provisions and that such freedom is consistent with the deregulatory spirit of the Act. The Commission is aware of the critical role that independent action plays under the statutory scheme as a counterbalance to conference economic power. Therefore, such provisions receive close scrutiny in the review process.

Where it appears that a particular independent action provision may inhibit independent action, the Commission has sought and obtained modification of the provision by the parties through the negotiation process. These negotiations have led to the deletion from agreements of independent action provisions which mandate that a member taking independent action attend a meeting and explain the independent action before the action may go into effect and also provisions which provide for mandatory compromise of independent action. The negotiaton process has worked thus far to remove objectionable independent action procedures from agreements. At this time it therefore does not appear necessary to undertake a rulemaking proceeding regarding independent action. However, should there by any indication that the right of independent action is being interfered with in any way, such a rulemaking proceeding will be considered.

Section 572.802 Mandatory Provisions in Existing Interconference Agreements.

Section 572.802 in the Interim Rule provided that existing interconference agreements and agreements between carriers not members of the same conference must provide for independent action. Comment 38 suggests that § 572.802 be transferred to § 572.502(b). This suggestion has been adopted.

Section 572.803 Expiration dates In Existing Agreements.

Section 582.803 provides that expiration dates in existing agreements remain in effect on and after June 18, 1984. The section further provides that parties to agreements with expiration dates must file any modification seeking renewal for a specific term, or elimination of the expiration date, in sufficient time to accommodate the waiting period required under the Act. Comment 38 suggests that § 572.803(b) should be transferred to § 572.401. This suggestion is adopted.

Subpart I—Penalties

Subpart I prescribes penalties for violations of Part 572 as provided for in section 13(a) of the Act.

Section 572.901 Failure to File.

Sections 4 and 5(a) of the Act provide for the filing of certain agreements with the Commission. Failure to file such an agreement is a violation of section 5(a) of the Act and Subpart D. This failure to file is subject to the penalties of section 13(a) of the Act (46 U.S.C. app. 1712(a)). Maximum penalties are $5,000 for each violation unless the violation was willfully and knowingly committed, in which case the maximum penalty is $25,000 for each violation.

Section 572.901 is amended to add the phrase "pursuant to sections 4 and 5(a) of the Act and this part and not exempted pursuant to section 16 or excluded from filing by the Act". This change clarifies that only agreements subject to the Act and requiring filing can be penalized for failure to file, as opposed to agreements subject to the Act but which do not require filing. This responds to Comments 34 and 38 which suggested these changes.

Section 572.902 Falsification of Reports.

Falsification of any report required by the Act and Part 572, including falsification of any item on the Information Form, is made subject to the civil penalties set forth in section 13(a) of the Act. Such violations may also be

[4] A number of persons filed emergency comments (Comments 3, 4, 5, 6, 7, 11, 14 and 18) which either in whole or in part sought modifications of these mandatory provisions. On June 12, 1984 the Commission made certain amendments to the mandatory provisions in the Interim Rule in response to the concerns expressed in the emergency comments.

subject to criminal sanctions under 18 U.S.C. 1001.

Comment 29 challenges the Commission's authority to provide by rule for penalties for falsification of reports when the Act does not specifically proscribe such activity.

Section 17(a) authorizes the Commission to prescribe rules necessary to carry out the Act and section 13(a), in turn, establishes penalties for violations of the Act and regulations issued thereunder. It is essential that information submitted to the Commission be truthful information if it is to adequately administer the Act. The penalty provision furthers this fundamental purpose.

Comment 29 further asserts that this section is unnecessary because 18 U.S.C. 1001 already makes it a violation of the criminal code of the United States to intentionally make false statements within the context of any matter arising within the jurisdiction of a federal agency.

Section 572.902 is not superfluous. To supplement the criminal penalties under 18 U.S.C. 1001, it provides for civil penalties pursuant to section 13(a). Not all situations involving falsification of reports might merit the imposition of criminal penalties. In some situations civil penalties may be appropriate. Moreover, the reference to 18 U.S.C. 1001 in § 572.902 is a useful reminder of possible criminal liability.

Finally, Comment 29 maintains that the choice of the word "falsification" makes § 572.902 overbroad. It is submitted that unintentional misstatements could be construed as "falsifications" and thereby made subject to penalties.

Section 572.902 is amended by adding the word "knowing" before the word "falsification" where it appears. This modification clarifies that only parties who intentionally, and not mistakenly, submit false information will be subject to penalties.

Comment 22 submits that the penalties provided for in § 572.902 are excessive when considered in light of the difficulty of ascertaining some of the data required on the Information Form.

This Comment appears to be primarily addressed to the content of the Information Form. There should be no misunderstanding, however, of the application of the penalties provisions except in cases where parties knowingly falsify information. Parties will not be subject to penalty under Subpart I where they are unable to supply data requested on the Information Form.

Appendix A to Part 572—Information Form and Instructions

Commission Authority to Require Filing of the Information Form

Section 572.405 requires the party filing certain agreements to provide with the agreement information that is necessary under the Act to review the agreement. The required information is to be provided in the Information Form set forth in Appendix A. Where the filing party is unable to supply a complete response, the party should submit either estimated data with an explanation as to why the precise data are not available or a detailed statement of the reasons for noncompliance and the efforts made to obtain the required information.

Six comments address the issue of the Commission's authority to require the filing of the Information Form. Four comments disagree that the Commission has the authority to require the Information Form to accompany the filing of certain agreements. These comments make two related arguments in support of their position: one, there is no explicit obligation for parties filing agreements under section 5(a) of the Act to submit supplemental detailed information concerning competitive factors with every agreement at the time of its filing; and two, the Information Form, which requests information relevant to the general standard, cannot be the basis for rejection of an agreement under section 5(a) of the Act, which contains no reference to the general standard.

Authority to require the Information Form is manifest for three main reasons. First, the statute clearly and explicitly authorizes the Commission to require that information accompany the filing of agreements and the agreements that do not meet this requirement may be rejected. Specifically, section 5(a) of the Act authorizes the Commission to "prescribe * * * the additional information and documents necessary to evaluate the agreement" (46 U.S.C. app. 1704(a)). The legislative history to section 5 of the Act specifies that the filing requirements are intended "only for information relevant to the Commission evaluation of an agreement rather than for information based on broad standards unrelated to that agreement." (H.R. Report 98–600, 98th Cong., 2d Sess. 28 (1984)). Section 6(b) of the Act authorizes rejection of any agreement filed under section 5(a) of the Act that does not meet the requirements of section 5 of the Act.

Congressional intent concerning the evaluation of an agreement prior to the agreement's effective date is interpreted to require not only a review pursuant to the section 6(b) standard (for compliance with section 5 requirements), but also an analysis based on the section 6(g) general standard for substantially anticompetitive agreements. Moreover, the authority under section 5(a)—to prescribe information to be filed *with* the agreement—differs from the authority under section 6(d)—to require *additional* information to be submitted after the agreement has been filed but prior to its effective date. The initial information filing requirements are designed to provide only the information needed to determine whether or not the agreement raises substantial issues of unreasonable and anticompetitive effects under the section 6(g) general standard. Where such anticompetitive effects are likely, additional information that is necessary in order to make a determination under section 6(g) whether or not to seek to enjoin the agreement may be requested under section 6(d).

Second, Congress has specifically cited in legislative history relevant portions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 as the model for the Commission's agreement review procedures. Pursuant to the Hart-Scott-Rodino Act, the Federal Trade Commission (FTC) developed a report form for information to aid the FTC in its preclearance review of proposed acquisitions and mergers ("Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions").

Third, Congressional policy pronouncements in the Act and the legislative history indicate that one of the purposes of the Act was to end the delay in the processing of agreements and to provide a streamlined regulatory process. Submission of relevant information at the time an agreement is filed that is not available to the Commission but is readily available to the filing party will expedite the processing of agreements.

Two comments specifically refer to the Commission's authority to require an initial Information Form related to the general standard. Comment 23 states that if an information filing requirement is prescribed, it must be limited to those instances where the agreement or modification raises a question under the general standard. Comment 34 accepts the premise that useful information not available to the Commission, but readily available to the parties filing substantially anticompetitive agreements, may be required in conjunction with such filings. Such

requirements, according to Comment 34, will significantly reduce the need to request additional information from the filing parties, thereby aiding the review process.

In consideration of the above, it is concluded that the 1984 Act does confer the authority to require the submission of the Information Form in conjunction with the filing of certain agreements.

General Discussion of the Information Form

A number of comments argue that the Information Form is "excessive and irrelevant", "burdensome and unnecessary", seeks information not "readily available", or "resuscitates" the *Svenska* standard. Specific comments will be addressed in the discussion of the particular part of the Information Form. However, it should generally be stated that the requirements outlined in the Information Form are within the statutory limits on information gathering powers granted the Commission under sections 5 and 6 of the Act. The data requirements in the Information Form conform to the complicated decision calculus, described in the legislative history, that is required in order to render a determination that an agreement is or is not violative of the section 6(g) general standard. In the Interim Rule, the Commission stated,

> The Commission recognizes that the amount of information requested on the Information Form is significant. These information needs may be refined as the Commission gains experience under the general standard and determines what is relevant and essential to that review. In addition, the Commission plans to develop its own internal sources of trade information and as this information becomes available may be able to reduce the amount of information requested on the Form.

Since the publication of the Interim Rule, valuable experience has been gained in applying the Information Form to the analysis of agreements under the general standard. Moreover, the Commission has acquired and begun to utilize Journal of Commerce and Bureau of Census data sources which, when used in conjunction with its trade monitoring capabilities, provide a better picture of the competitive implications of ocean carrier agreements.

Moreover, the Information Form, as promulgated in the Final Rule, is not set in concrete, but will in all probability continue to evolve in order to appropriately reflect the Commission's regulatory needs in light of its data resources and changes in the regulated industry. Therefore, in the Final Rule there has been a general reduction in the amount of information required in the Form. Specific changes to the Information Form are indicated in the particular Part together with a discussion of the comments and the amendments to the Information Form.

Part by Part Discussion

Part I—Agreement Name. Part I requires the filing party to provide the full name of the agreement. One comment addressed this part simply to indicate that this requirement (along with Part II) was not objectionable as a quick identifier of the agreement. Accordingly, Part I will remain unchanged in the Final Rule.

Part II—Agreement Type. Part II requires the filing party to indicate whether or not the agreement authorizes the parties to collectively fix rates (Part II(A)), to pool cargoes or revenues (Part II(B)), or to establish a joint service or consortium (Part II(C)).

In the Interim Rule, the instructions to the Information Form state that the nature of the agreement determines the extent of information required. Specifically, the instructions require only those agreements that provide for rate-fixing, pooling or joint services/consortia to complete Parts III and IV, which seek information on market share and market competition. Such requirements are justified in the instructions on the basis that "these three types of agreements of all agreements historically filed with the Commission are the most likely to trigger the 6(g) standard because of their potential to create excessive market power."

Part II and the Instructions have been amended to clarify and conform Part II with the intention that only those agreements that provide for rate-fixing, pooling or joint services/consortia *or* significant modifications to such agreements are required to complete Parts III and IV. Parties filing amendments to agreements should refer to section 572.403(a) for guidance as to which amendments require the Information Form. Furthermore, the requirement that a completed Information Form include Part VIII (Reports, Studies or Other Research) for all filing parties has been limited to only those parties that have answered "yes" to any question in Part II (see the discussion under Part VIII).

Comment 23 states that only those types of agreements mentioned in Part II that could raise questions under the general standard should be required to file the Information Form. In particular, the comment argues that the Information Form should only be required for those agreements or modifications that authorize or directly increase the authority of the parties to: (1) Fix ocean rates; (2) allocate cargo or revenue between or among them; or, (3) reduce service at United States ports; and, which may also result in a significant reduction in competition.

The Commission generally agrees with the comment. The Information Form, as formulated in the Final Rule essentially conforms to the comment's suggestion. Part II identifies three types of agreements, the first two of which are identical to the first two agreement categories cited by the comment. Part V requires those agreements with service authority to specify any reduction in service that is likely to occur as a result of the agreement. Thus, Part V addresses those agreements in the comment's third agreement category.

Moreover, for all other agreements, the requirements imposed by the Information Form are minimal. In particular, the only parts of the Information Form required under the Final Rule for parties filing agreements, other than rate-fixing, pooling and joint service agreements, or agreements with service authority, or those agreements exempted from the filing requirement, are Parts I, II, VI and IX. For most agreements, all that these parts require is checking a box or entering name, address and signature. Other than those "Part II agreements" discussed above, the only other subtantive requirement would be imposed upon those agreements that are required to complete Part VI. Because restrictions imposed by governments are the most effective limitations on competition in the ocean liner trades, Part VI captures important information for analysis under the general standard. For example, certain agreements that facilitate access to cargoes subject to foreign cargo preference laws or decrees which are not otherwise required to indicate any market information on the Form would be required to complete Part VI.

Five comments address the requirement that certain types of agreements must complete Parts III and IV of the Information Form.

Two comments refer specifically to the inclusion of joint service agreements in Part II. Comment 18 argues that the implication that joint service agreements are likely to be violative of the general standard should be rejected. Comment 30 supports the requirement that joint service/consortium agreements complete Parts III and IV, citing the potential for this type of agreement to reduce competition especially if the cooperating carriers dominate the relevant trade.

There are two major concerns with joint services under the general standard. The first, which was mentioned in Comment 30, involves a situation where two or more of the parties to the proposed joint service currently have an *existing* service in the trade. Thus, the formation of the joint service eliminates the existing competition between or among the parties in the relevant trade(s). The second concern involves the entry into a trade of a new joint service which is so large as to be able to exercise market dominance in the trade it plans to *enter*.

In order to assess the competitive impact of a new joint service agreement, the filing of an Information Form with such agreements will continue to be required. Therefore, no change is made in the Final Rule in this regard.

Comments 26, 28 and 38 argue that conference agreements are less likely to raise issues under the general standard than service coordination, pooling and joint service agreements. They also argue that information required for conference agreements is excessive and should be deleted or reduced.

The Commission concurs in part with these comments that conference agreements "apart from extraordinary circumstances" are not likely to be violative of the general standard and that the specific statutory restrictions on conference activities diminish the ability of a conference to abuse its position of dominance in a trade. However, such a view, which appears to comport with Congressional intent, does not remove the Commission's responsibility under the Act to review conference agreements for possible violations of the Act. Such a review must consider accepted economic principles which hold that explicit collusion in the form of price-fixing agreements may result in prices that are higher than competitive levels.

There is, however, no presumption that conference agreements will violate the general standard. In setting out the requirements for completing the Information Form, in particular Parts III and IV concerning market share and market competition, the Commission considered those agreements among all the types of agreements with which it was familiar that had the greatest potential to reduce competition and create market power in such a manner as to raise concerns under the general standard. The Commission adheres to its belief that in the unusual and severe cases where the general standard may be violated, either one or a combination of rate-fixing, pooling or joint service agreements will be involved. Consequently, the Commission will continue to apply the more rigorous data requirements contained in Parts III, IV and VIII for conference agreements.

Two comments argue that certain classes of agreements should be added to those having potential substantial anticompetitive implications and that further information filing requirements should be imposed. Comment 28 specifically criticizes the failure to subject service coordination agreements (i.e., "cross chartering combined with joint control over sailings and itineraries") to greater scrutiny than conference agreements. The comment urges that service coordination agreements be required to complete Parts III and IV, and Part VII (Benefits of the Agreement), the completion of which is now voluntary for all types of agreements. Comment 30 proposes the addition of all equal access agreements to those agreements required to complete Parts III and IV.

In partial response to Comment 30, it should be noted that equal access agreements invariably arise in response to the actions of a government and, therefore, require the completion of Part VI. However, in considering these and other recommendations for inclusion in the Final Rule, care must be taken to ensure that all parties affected by the Final Rule have the opportunity to comment. The Commission cannot create new filing requirements for a class of agreements without first availing the affected parties with the opportunity to comment. The Commission may in a separate rulemaking procedure consider and propose rules that would address the issues raised in Comments 28 and 30. Accordingly, the Commission here withholds any further discussion of these aspects of Comments 28 and 30.

Comment 39 recommends that the requirement to submit an Information Form together with the required information contained therein should be "tailored to the type of agreement filed."

The Commission concurs with this comment. The Commission has, consistent with its agreement review responsibilities under the Act, required the Information Form only for new agreements (excluding marine terminal agreements, assessment agreements and exempted agreements) and modifications of agreements that may present substantial issues of competitive harm under the general standard. Moreover, the requirement to complete certain parts of the Form (e.g., Parts III, IV, V and VIII) is, in fact, tailored to the type of agreement involved.

Part III—Market Share Information. Part III requires those parties answering "yes" to Part II (A), (B) or (C) to provide the combined market share of all parties to the agreement (Part III(C)) by providing the amount of liner cargo carried by all parties to the agreement in each sub-trade (Part III(A)) and dividing this amount by the total amount of cargo carried on all liner vessels operating in each sub-trade (Part III(B)). Background Information to Parts III and IV indicates that the amount of cargo is to be given in both weight tons and on a dollar value basis. Sub-trade is defined as liner movements between each foreign country and each U.S. port range within the scope of the agreement, where a port range is identical to the Bureau of Census' U.S. Coastal District. Liner service refers to a definite, advertised schedule, giving relatively frequent sailings at regular intervals between specific U.S. ports or port ranges and designated foreign ports or port ranges.

A number of comments address this part. They express a common concern that the information required in Part III is irrelevant, excessive, burdensome, and meaningless. The earlier discussion of the authority to require filing parties to submit an Information Form with certain agreements addressed the question of the relevancy of the Information Form.

A number of comments generally recommend that carriers be allowed to submit data in the form in which they actually keep it and use it. Several comments urge that market share should be requested as a good faith estimate based on available data and an explanation of the estimating process. Comments on specific data filing requirements in Part III are summarized below. The discussion of the comments and the Commission's statement of its course of action will not follow the summary of each topic, but will pertain to all comments to Part III at the end of this section.

Sub-trade. Comments referring to the requirement that data be given by sub-trade generally object to it on the grounds that trade data is not kept by carriers on a sub-trade basis, and, therefore, such data is not readily available or within the parties' grasp. Cargo data, according to several comments, is kept by carriers on a port, or port range or rate group basis. Moreover, according to two comments (23, 26), the separation of foreign port ranges into foreign countries and the division of U.S. port ranges along the lines of Customs districts does not reflect the markets or trade routes over which carriers actually compete. With intermodalism, Comment 26 argues, the U.S. West Coast should be one port range, not two, because of the ease with

which interior point and minilandbridge traffic can shift from one state to another.

Amount of Cargo on a Weight Ton and Dollar Value Basis. Six comments object to the requirement that cargo data be given in dollar value, two of which also object to a weight ton basis requirement. These comments generally argue that the dollar value of the cargo is not a significant statistic to the carriers so they do not ordinarily keep records of the cargo's dollar value. The dollar value is available through the Bureau of Census, but it is not within the parties' grasp. Comment 36 states that because cargo data compiling methods differ from trade to trade, parties should be permitted to specify the unit of measurement in submitting cargo data if weight ton and dollar value measure are unavailable.

Non-Party Cargo Data (Part III(B)). Comments generally argue that the cargo data collection problems for parties are increased when they are applied to nonparties to the agreement. Several comments maintained that the carriers do not have ready access to cargo information relating to their competitors in a trade. The most reliable information on carrier cargo statistics is Bureau of Census, which should, according to Comment 34, be purchased by the Commission directly instead of being purchased by the parties and then submitted to the Commission. This comment urges that Part III(B) be eliminated along with Part III(C).

Liner Service. Comment 30 recommends that the Commission specify in the Instructions to the Form where it defines liner terms that these definitions and descriptions apply only in the context of the Information Form. Such a clarification would preclude any confusion as to what persons are subject to the Act. For example, bulk parcel tankers may meet the definition of a liner service but, according to the comment, are not subject to the Act.

The Commission generally agrees with the comments to Part III. The Commission does not wish to impose excessive burdens on the filing parties or to require the submission of data not within the parties' grasp. Moreover, the data submitted should be meaningful, that is, the data should not be an artificial manipulation of disparate data (e.g., a combination of parties' business records and Census data in order to derive market share). More importantly, the Commission, which now has access to both the Bureau of Census and Journal of Commerce data bases, is aware, as several comments argued, that these data bases contain weight and dollar value data which are not perfect indicators of market share. More relevant and preferable as a measure of market shares are revenue tons, which may include measurement tons or weight tons, or container statistics measured in TEU's. Such data, where provided, can augment internal data sources.

Accordingly, the Final Rule will indicate that market share data provided in Parts III (A), (B), and (C) may be estimated based on data available to the filing party. All estimates should be accompanied by an explanation indicating how the estimates were derived (an explanation of why precise data are not available is no longer required for Parts III or IV; see discussion of § 572.405). "Available" data is data within the parties' grasp, that is, data that the parties have already acquired, or would ordinarily acquire in the course of undertaking such commercial decisions embodied in their proposed agreement. The Instructions and Explanation and the Information Form will be amended to require that market share data be provided for each sub-trade within the scope of the agreement only where such data is available to the parties or where sub-trades represent the relevant market for liner service. Where the relevant market for liner service is more accurately represented by the entire geographic scope of the agreement, or by certain foreign port ranges (rather than foreign country), or by combinations of U.S. port ranges, the parties may provide market share on that basis. The geographic scope for which market share information is provided should be clearly defined.

Market share data may be provided in units that are ordinarily kept and used by the parties. The data is to be provided for the most recent twelve-month period for which data are available. Where estimates have been made, the filing party should so specify and indicate the basis of their derivation. Units of measurement should be clearly indicated for all data provided.

The Instructions and Explanation will also indicate that the definition of liner service and other liner terms is relevant only to the Information Form and does not affect the determination of persons subject to the Act based on the Act itself or the Final Rule.

Part IV—Market Competition. Part IV requires the filing party to provide the names of all non-party liner operators currently serving each sub-trade (Part IV(A)(1)), the names of all liner operators serving alternative liner routings competing for cargoes carried in each sub-trade (Part IV(A)(2)), and a description of the extent of competition offered by such liner operators (e.g., estimates of market share or underutilized capacity in alternative liner routings, Part IV(A)(3)). This part also requires the identification of all nonliner competitive substitutes (e.g., bulk or air freight, Part IV(B)(1)) and estimates of the percentage of liner cargo that is currently carried by nonliner operators (Part IV(B)(2)).

Eight comments address this part. Five comments argue that much of the data required in this part is not known and not readily obtainable, or if provided by the parties is not meaningful or accurate. These comments generally indicate that data provided in this part would be only an educated guess or a matter of judgment.

Several comments address the relevance of the information required. Comment 28 argues that non-party liner market share adds nothing to market share analysis. Comments 28 and 39 state that data on non-liner competition is not meaningful or helpful to the review of the agreement. However, Comment 38 maintains that such data for liner and non-liner competition would only be relevant to a market share analysis. Comment 34 contends that the need for such data is specified in the legislative history to the Shipping Act of 1984, but the Congressional intent is that such information would be better provided by third-party sources. Comment 27, in arguing that the required information is not readily available to carriers, states that the Commission should recognize the fact that liner and nonliner competition make liner freight rates reasonable.

Comments 23 and 34 recommend that Parts IV(A) (2), (3) and IV(B) should be optional because the data provided serves the parties' interests. Comments 27 and 36 recommend that Parts IV(A) and IV(A)(1) be deleted. Comment 36 requests the addition of certain qualifying terms that would make the data requirements less precise and more at the discretion of the parties.

The Commission recognizes the difficulty of providing precise data in response to the requirements of Part IV. The instructions to this part in the Interim Rule allow the use of estimates in the determination of percentages indicating the extent of liner and non-liner competition in Parts IV (A) and (B), respectively. Parties are expected to have some knowledge of the identity of their competitors and, at least approximately, the degree to which non-party liner operators and certain non-liner operators are competitive with the parties.

The Commission agrees with one comment that the presence of liner and non-liner competition should militate against unreasonably high rate levels. Moreover, the need and relevance of such information to the review of agreements under the general standard is clearly indicated in the legislative history. The extent of liner and non-liner competition aids in the determination of the relevant market share and is necessary in order to determine the potential market power of parties to an agreement operating in that market. The specification of such liner and non-liner competition may tend to decrease the market share of the parties to their benefit in the analysis under the general standard.

The Commission is developing or acquiring data sources that should enable it to supplement the parties' data on the competitive conditions in most ocean trades. However, the Commission, in order to assist and expedite its preliminary review of agreements under the general standard, requires information that the parties could be expected to have concerning their competitors that would complete or support the Commission's data.

Because of the relevance of this information to the preliminary review of an agreement, the Commission continues to require in the Final Rule, parties with affirmative answers to Part II (A), (B) and (C) to complete Part IV. The Final Rule will indicate that the data required can be estimated. Parties should continue to identify the sources for such estimates. The units of measurement to be used in providing cargo data are at the discretion of the parties. However, all units of measurement must be clearly identified. The parties need not, for their responses to Part III or Part IV, utilize any data sources that they have not already acquired, or would not ordinarily acquire in the course of undertaking such commercial decisions embodied in their proposed agreement.

Part V—Service to the Shipping Public Under the Agreement. Part V requires the filing party to identify all U.S. ports expected to be served under the agreement (Part V(A)), to specify each party's reduction in frequency to each port within the scope of the agreement (Part V(B)), and to specify any elimination of service to any U.S. port within the scope of the agreement which occurs as a result of the implementation of the agreement (Part V(C)).

Six comments address Part V. The consensus of the comments is that information concerning the reduction or elimination of service should be required only of agreements that have the authority to reduce service. Ratemaking agreements that do not, according to Comment 32, "seek to control the fact or frequency of any member line's service" should not be required to complete Part V.

The intent of Part V is to obtain information, not otherwise available, that is essential to an analysis under the general standard of reductions in service resulting from the agreement. Clearly, agreements with no service authority cannot be construed as having the potential, through a reduction in competition, to unreasonably reduce service levels. Consequently, the completion of Part V will be required only for those agreements that have service authority. Service authority is defined as including either or both of the following authorities allowing parties to agree between or among themselves: to allocate (or otherwise provide) tonnage or capacity between or among carriers serving the trade(s); to establish a schedule of ports or otherwise allocate ports which each carrier will serve and/or the frequency of each carrier's calls at those ports.

Comment 27 indicates that Part V is relevant, but Part V's emphasis on service to ports is contrary to the Act's intent, which is "to permit carriers to structure their own affairs and thereby provide more efficient service to shippers." Because it does not follow that a reduction in service to ports is a reduction in service to shippers, the Commission should, according to this comment, readjust its focus on ports to address the issue of service to shippers.

The frequency of port calls is used because it is a readily available index of service to shippers. There are, of course, other indices that indicate the service to shippers (including, for example, capacity, type of vessel, transit time, number of handlings). However, to require such data would likely present filing parties with an unduly burdensome data collection task. Moreover, such data would likely be of marginal use for the analysis of most agreements under the general standard. If reductions in frequency or the elimination of service to ports are indicated in Part V, which, when combined with the Commission's general knowledge of trade conditions, are sufficient enough to present questions under the general standards, the Commission may at that time seek additional information either informally or under the authority of section 6(d) of the Act in order to more specifically address the impact of the agreement on service to shippers. Consequently, in lieu of any specific suggestions in the comment as to how service to shippers could be more accurately and practicably determined and obtained, the Commission will continue to utilize port calls as one initial proxy for service to shippers.

Comment 23 maintains that the reference to indirect port calls via surface carriage in the instructions to Part V(A) implies that, for the purposes of responding to Part V(A), a "port" could include inland points and that port calls could include pick-up or delivery at such inland points by railcars and trucks. Comment 23 also recommends that port calls required by Part V(B) refer only to direct or indirect calls by vessels under the direct operational control of the parties.

The Commission is persuaded that potential problems may exist involving excessive data required in Part V for indirect intermodal service and for service by vessels not under the operational control of the parties. Consequently, the use of the term "port calls" in the Information Form and Instructions is changed to delete reference to surface carriage and to account only for port calls by vessels under the direct operational control of one or more parties to the agreement. For the purpose of the Information Form, the term "port" means the place with a harbor that an ocean carrier serves, either directly by oceangoing vessel or indirectly by feeder service. The use of this definition is applicable only to the Information Form and in no way changes the meaning of "port" as referenced elsewhere in the Final Rule. The identification of other forms of indirect service such as intermodal service (e.g., interior point of miniland-bridge service) or transshipment may be provided on a voluntary basis by the parties where such data may assist and expedite the analysis of the agreement's impact on service, but it will not be required with the initial filing. The Commission may, however, request such data pursuant to its authority under section 6(d) of the Act where substantial reductions in service are indicated both by the agreement and by the analysis under the general standard of the agreement and the relevant trade(s).

Comment 36 recommends that Part V(A) be changed to require only the identification of those ports "expected" to be served, and that Part V(B) be amended to require an estimate of any change in the frequency of port calls, rather than reduced sailings.

With regard to the comment's concerns with Part V(B), the analysis of services under the general standard pertains to unreasonable reductions in

the level of service. The Commission need only, therefore, require parties to provide reductions in service that will occur as a result of the implementation of the agreement. With regard to the suggestion that Part V(A) indicate those ports expected to be served, the instructions to Part V(A) already so state. Consequently, Part V(A) will be changed to conform to the instructions.

Comment 26 refers to Part V(B) (2) which specifies that the elimination of service to any port need only be indicated where it occurred "as a result of the implementation of the agreement." This comment urges that similar restrictive language be applied to Part V(B) (1) as well.

Part V(B), seeks information concerning the reduction or elimination of service at any port within the scope of the agreement for the purpose of analyzing the impact of an agreement under the general standard. Consequently, the Commission is only interested in Part V(B) (1), as it is in Part V(B)(2), insofar as the specified reduction of service is likely to occur as a result of the implementation of the agreement. The Final Rule will, therefore, reflect the change in language urged by Comment 26.

Part VI—Foreign Government Involvement in the Liner Market. Part VI requires the filing party to indicate whether or not the agreement was entered into as a direct or indirect response to any law, decree or other action promulgated or otherwise implemented by a foreign government (Part VI(A)). Where the filing party has so indicated, then all such governmental actions that have led to the agreement should be specified (Part VI(B)). The filing party is also required to indicate whether or not the governmental action limits access to the carriage of liner cargoes (Part VI(C)) and, if so, to explain how access is limited (Part VI(D)) and to provide the percentage of liner cargo carried within the scope of the agreement to which access is limited (Part VI(E)).

Four comments address Part VI. Comment 22 has "no quarrel" with this part. Comment 26 states that the instructions to this Part should be clarified so that Parts VI (C), (D) and (E) are required only where Part VI(A) is answered in the affirmative. The concerns of Comment 26 can be alleviated by reference in the Information Form to Part VI(C) which clearly refers to Part VI(A), and to Parts VI (D) and (E), which clearly refer to Part VI(C).

Comment 34 argues that Part VI is not relevant with respect to ratemaking agreements and, therefore, should not be applicable. The Commission concurs that most conference agreements have not usually been established in direct or indirect response to government laws, decrees, etc. Nonetheless, certain laws of foreign governments do require that a carrier, in order to carry cargo in that country's oceanborne foreign commerce, be a conference member. The Commission will retain the requirement that parties filing conference agreements or significant amendments to such agreements answer the pertinent portions of Part VI.

Comment 38 states that government laws are not relevant to any standard pertaining to the rejection of an agreement under sections 6(b) or 6(g) of the Act. Moreover, even if such laws were relevant, no reason is given, according to this comment, as to why Part VI should apply to foreign government and not U.S. laws.

The inclusion of Part VI, as explained in the Interim Rule, is based on the premise that, given the contestability of the liner shipping industry, in all but the rarest cases, only the actions of governments can effectively restrict entry to a trade. In such cases where entry is so restricted, excessive market power is most likely to arise and present significant issues of potential competitive harm under the general standard. Thus, the Commission rejects the claim made by Comment 38 that information concerning foreign government involvement in the liner trades is not relevant to the preliminary review of an agreement under the general standard. The general authority to reject agreements under section 6(b) is addressed earlier in the discussion of Appendix A.

It may be helpful to reiterate and further clarify what is meant by an agreement that is a direct or indirect response to a governmental law, decree or other action. Where, for example, laws of a foreign government require that a carrier, in order to carry cargo in that country's oceanborne foreign commerce, must be a conference member, then an agreement that establishes a conference in order for the parties to enter that trade would be a direct response to such governmental laws and, thus, would be required to answer Part VI. Moreover, a commercial agreement that was in response to a governmental action that was itself in response to the concerted actions of other governments would also be required to complete Part VI. For example, any commercial space charter agreement that was filed in response to laws promulgated by a government that sought to impose cargo sharing schemes through such space chartering agreements and, in such a fashion, implement the UNCTAD Code of Liner Conduct, would be required to complete Part VI.

In addition, the treatment of equal access agreements should be clarified in light of Comment 30, which states that equal access agreements may not be in response to the actions of governments. Such agreements, which facilitate access by certain carriers to cargoes subjected to government preference laws, decrees or other practices necessarily interject a foreign government into liner shipping and, therefore, require the completion of Part VI, which the instructions to the Information Form in the Final Rule will state.

An agreement that was an indirect response to a governmental action would be any agreement that facilitated the implementation of government laws, decrees, etc., or an agreement that flowed from such governmental action. An indirect response to the example stated above would be the creation of a pool that facilitates cargo sharing within the conference even though the pool was not *per se* required by such governmental action.

Only foreign government laws have been addressed in Part VI because the Commission is either familiar with or can easily obtain the information it requires concerning U.S. cargo preference laws. The involvement of foreign governments in liner markets is not necessarily so easily determined.

Part VII—Benefits of the Agreement. Part VII requests the filing party to indicate the benefits of the agreement that will accrue to the parties to the agreement (Part VII(A)) and to shippers and U.S. commerce generally (Part VII(B)). In response to emergency comments, the Information Form was amended to make the completion of Part VII voluntary.

Seven comments address this part. Three comments are generally supportive of this part's inclusion in the Form. Comments 22 and 34 assert that the provision of the agreements' benefits will generally bolster the parties' case. Comment 26 concurs with the amendment to the Interim Rule that makes the completion of Part VII voluntary.

The three comments that oppose Part VII (Comments 27, 32, 37) generally take the position that a statement of benefits and substantiating data is a request for an advance justification of the agreement, placing the burden of proof on the parties to an agreement. These comments believe that Part VII

reinstitutes the *Svenska* standard and subverts the intent of the Act.

The Commission included Part VII in the Information Form in order to allow the parties to provide any information concerning increases in efficiency that may offset any reduction in competition resulting from the agreement. Such information would assist the Commission in its review of an agreement under the general standard, which, as outlined in the legislative history, compels the consideration of efficiency benefits. Such benefits may offset any negative effects of an agreement that are found likely to result in a substantial reduction in competition. Part VII allows those persons filing the agreement who are likely to be most knowledgeable about the agreement's resulting efficiencies to demonstrate those benefits. The completion of Part VII should be to the advantage of the filing parties. Moreover, it is not a mandatory requirement.

The Commission will make no *a priori* judgments concerning the benefits of an agreement based on the completion or lack of completion of Part VII. In the absence of the completion of Part VII the Commission, where it is deemed necessary, will on its own undertake the determination of the agreement's benefits. Where Part VII has been completed, the Commission will determine the validity of the efficiencies claimed and enter, again where necessary, its assessment of the agreement's benefits into its analysis of the agreement under the general standard. The Commission does not, therefore, view Part VII as a reinstitution of any aspect of the Commission's agreement approval standards under the Shipping Act, 1916. Part VII will remain unchanged in the Final Rule.

Part VIII—Reports, Studies or Other Research.—Part VIII requires the filing party to identify any reports, studies or other research that were prepared in order to determine the need for the proposed agreement.

Nine comments address this part. All oppose the requirement. These comments contend that it is: an unnecessary regulatory requirement; irrelevant to the general standard; so broad as to be incomprehensible; an invasion of confidential business information; a reinstitution of the *Svenska* test; the first leg of a fishing expedition that is arbitrary and caprcious because of the absence of any exploration in the public record; an unnecessary processing delay; discoverable under 6(d) but not 6(b); and, finally, a return to existing law requiring the parties to show that less anticompetitive alternatives exis.

The Commission believes that a clarification of Part VIII may adequately respond to these comments' objections. The Commission's goal in requiring parties to identify any reports made in conjunction with the proposed agreement is to avail the Commission staff of information within the parties' grasp that would assist and expedite the preliminary review of the agreement under the general standard. The use of the word "need" in the phrase ". . . for the purpose of analyzing, formulating or assessing the *need* for the proposed agreement . . ." is perhaps unfortunate. The Commission does not desire nor does it review as a proper burden to be placed on filing parties an *a priori* justification for the agreement on the basis of the commercial need for the agreement, or on the basis that no less anticompetitive alternatives to the agreement exist. The Commission is interested in any data the parties have gathered relevant to the competitive conditions in the relevant trade(s) and the competitive implications of the agreement. Specifically, this part is intended to solicit information on any studies commissioned or carried out by the parties pursuant to the agreement that examine rates, service levels and number and strength of competition in the relevant trades, or that forecast the effect of the agreement on such parameters.

In light of the comments and in order to clarify Commission intent with respect to Part VIII, the Commission is amending Part VIII and all references to this Part in the Instructions and Explanations to the Form to conform to the amended language. In order to minimize the burden on filing parties, only where the filing party has answered "yes" to Part II(A), (B), or (C) will Part VIII be required to be completed. The instructions to Part VIII will now read as follows:

> Part VIII requires a filing party that has answered "YES" to Part II(A), (B) or (C) to identify any reports, studies or other research that were prepared by or for any or all of the parties for the purpose of analyzing, formulating or assessing the competitive conditions in the relevant trade(s) affected by the agreement, or the competitive impact of the agreement on the relevant trade(s) affected by the agreement.

Part IX—Identification of Person(s) to Contact Regarding the Information Form and Certification of Authenticity. Part IX solicits the name(s) of the person(s) that the Commission may contact regarding any questions concerning the Information Form or a request for additional information. This part also requries a certification of the authenticity by the filing party of the information provided in the Form.

Three comments address Part IX. These comments generally oppose the certification requirement in Part IX(C) as burdensome and redundant. Comment 23 claims that the specific instructions for certification in Part IX(C) require an unreasonable confirmation of factual and legal conclusions regarding the accuracy and completeness of the Form. All comments refer to 18 U.S.C. 1001, which is itself specifically referenced in § 572.902 of the Rules. These comments urge the elimination of Part IX or the modification of its text to allow the filing parties to draft the certifications.

The Commission is persuaded that the text of Part IX(C) may present the parties with burdensome certification requirements. The Commission views, however, that a separate certification of the accuracy and completeness of the Information Form is important to the enforcement of the general standard. In order to relieve the filing parties of burdensome requirements, the Commission is simplifying the certification oath and eliminating the notarization requirement. The certification oath will read as follows:

> This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with the instructions issued by the Federal Maritime Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made, the information is, to the best of my knowledge, true, correct and complete.
> Name (please print or type) _____
> Title _____
> Relationship with parties to agreement _____
> Signature _____
> Date _____

III. Conclusion

This Final Rule, and the accompanying Information Form, are intended to implement the various agreements provisions of the Act in accordance with the 1984 Act's guiding policies. The changes made to the Interim Rule in response to the comments filed in Dockets Nos. 84–26 and 84–32 are intended further to facilitate the filing of agreements by parties and the review and monitoring of agreements by the Commission. These changes generally have reduced the regulatory burden on the ocean shipping industry and have retained only those requirements which are essential to the fulfillment of the Commission's regulatory responsibilities. The Commission believes that the Final Rule establishes a nondiscriminatory regulatory process with a minimum of

government intervention and regulatory costs.

The Chairman of the Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* that these rules will not have a significant economic impact on a substantial number of small entities, within the meaning of that Act. The primary economic impact of these rules would be on ocean common carriers which generally are not small entities. A secondary impact may fall on shippers, some of whom may be small entities, but that impact is not considered to be significant.

List of Comments and Pleadings Filed in Docket No. 84–26

1. Hoppel, Mayer & Coleman. May 30, 1984.
2. Philadelphia Port Corporation. May 31, 1984.
3. Trans-Pacific Freight Conference of Japan/Korea; Japan/Korea Atlantic and Gulf Freight Conference. June 4, 1984.
4. Associated Latin American Freight Conferences; United States Atlantic & Gulf/ Panama Freight Conference; Atlantic & Gulf/ West Coast of South America Conference; East Coast Colombia Conference; United States Atlantic 7 Gulf/ Southeastern Caribbean Conference; United States Atlantic & Gulf/Jamaica and Hispaniola Steamship Freight Association; United States Atlantic & Gulf/Ecuador Freight Conference; United States Florida/Ecuador Steamship Conference; South Atlantic & Gulf/Panama & Costa Rica Rate Agreement; South Atlantic & Gulf/Guatemala El Salvador & Honduras Rate Agreement. June 1, 1984.
5. Inter-American Freight Conference; Inter-American Freight Conference River Plate/Puerto Rico and U.S. Virgin Islands/ River Plate; Pacific Coast/River Plate Brazil Conference. June 1, 1984.
6. Australia/Eastern U.S.A Feight Conference; The "8900" Lines; Greece/U.S. Atlantic Rate Agreement; Iberian/U.S. North Atlantic Westbound Freight Conference; Marseilles/North Atlantic Freight Conference; Israel/U.S. North Atlantic Ports Westbound Freight Conference; Med-Gulf Conference; Mediterranean-North Pacific Coast Freight Conference; North Atlantic Israel/Eastbound Freight Conference; North Atlantic Mediterranean Freight Conference; U.S. Atlantic & Gulf/Australia-New Zealand Conference; United States Atlantic Ports/ Italy, France and Spain Freight Conference; West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference. June 4, 1984.
7. Thailand Pacific Freight Conference. June 5, 1984.
8. Pacific Westbound Conference; Pacific Straits Conference; Pacific/Indonesian Conference. June 1, 1984.
9. Graham & James. June 4, 1984.
10. Inter-American Freight Conference, Puerto Rico and U.S. Virgin Islands. June 5, 1984.
11. Chemical Manufacturers Association. June 6, 1984.
12. U.S.-Flag Far East Discussion Agreement. June 8, 1984.
13. North Atlantic/United Kingdom Freight Conference; North Atlantic/French Atlantic Freight Conference; North Atlantic Continental Freight Conference; North Atlantic/Baltic Freight Conference; Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference; Continental North Atlantic Westbound Freight Conference; North Atlantic Westbound Freight Association; United Kingdom & U.S.A. Gulf Westbound Rate Agreement; Continental U.S. Gulf Freight Association; Gulf United Kingdom Conference; Gulf European Freight Association. June 11, 1984.
14. U.S. Department of Justice. June 15, 1984.
15. National Maritime Council. July 24, 1984.
16. Australia/Eastern U.S.A. Freight Conference; The "8900" Lines; Greece/U.S. Atlantic Rate Agreement; Iberian/U.S. North Atlantic Westbound Freight Conference; Marseilles/North Atlantic U.S.A. Freight Conference; Med-Gulf Conference; Mediterranean-North Pacific Coast Freight Conference; New Zealand Rate Agreement; North Atlantic/Mediterranean Freight Conference; U.S. Atlantic & Gulf/Australia-New Zealand Conference; U.S. South Atlantic/Portuguese, Moroccan and Mediterranean Rate Agreement; United States Atlantic Ports/Italy, France and Spain Freight Conference; West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference (WINAC). August 6, 1984.
17. North Atlantic/United Kingdom Freight Conference; North Atlantic/French Atlantic Freight Conference; North Atlantic Continental Freight Conference; North Atlantic/Baltic Freight Conference; Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference; Continental/ North Atlantic Westbound Freight Conference; North Atlantic Westbound Freight Association; United Kingdom & U.S.A. Gulf Westbound Rate Agreement; Continental U.S. Gulf Freight Association; Gulf United Kingdom Conference; Gulf-European Freight Association; North Europe-South Atlantic Rate Agreement; U.S. South Atlantic-Europe Rate Agreement. August 10, 1984.
18. Johnson Scanstar. August 15, 1984.
19. City of Los Angeles Harbor Department. August 20, 1984.
20. Trans Freight Lines, Inc. August 23, 1984.
21. Port of Sacramento. August 24, 1984.
22. North Europe U.S. Pacific Freight Conference; Pacific Coast European Conference; Latin America/Pacific Coast Steamship Conference; Pacific Coast River Plate Brazil Conference; Pacific/Australia-New Zealand Conference; and their respective member lines. August 27, 1984.
23. Australia/Eastern U.S.A. Freight Conference; The "8900" Lines; Greece/U.S. Atlantic Rate Agreement; Iberian/U.S. North Atlantic Westbound Freight Conference; Marseilles/North Atlantic U.S.A. Freight Conference; Med-Gulf Conference; Mediterranean North Pacific Coast Freight Conference; North Atlantic/Mediterranean Freight Conference; U.S. Atlantic & Gulf/ Australia-New Zealand Conference; U.S. South Atlantic/Portuguese, Moroccan and Mediterranean Rate Agreement; United States Atlantic Ports/Italy, France and Spain Freight Conference; West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference (WINAC). [Comment on Information Form]. August 27, 1984.
24. Australia/Eastern U.S.A. Freight Conference; The "8900" Lines; Greece/U.S. Atlantic Rate Agreement; Iberian/U.S. North Atlantic Westbound Freight Conference; Marseilles/North Atlantic U.S.A. Freight Conference; Med-Gulf Conference; Mediterranean North Pacific Coast Freight Conference; North Atlantic Mediterranean Freight Conference; U.S. Atlantic & Gulf/ Australia-New Zealand Conference; U.S. South Atlantic/Portuguese, Moroccan and Mediterranean Rate Agreement; United States Atlantic Ports/Italy, France and Spain Freight Conference; West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference (WINAC). [Comment on Proposed Rule]. August 27, 1984.
25. U.S.-Flag Far East Discussion Agreement. August 27, 1984.
26. Malaysia/Pacific Rate Agreement; Pacific/Indonesian Conference; Pacific Straits Conference; Pacific Westbound Conference. August 27, 1984.
27. Council of European & Japanese National Shipowners' Associations. August 27, 1984.
28. American President Lines, Ltd. August 27, 1984.
29. U.S. Gulf/Brazil Pooling Agreement; U.S. Pacific/Brazil Pooling Agreement; Brazil/U.S. Pacific Pooling Agreement; U.S. Gulf/Argentina Pooling Agreement. August 27, 1984.
30. Chemical Manufacturers Association. August 27, 1984.
31. U.S. Department of Justice. August 27, 1984.
32. U.S. Department of Transportation. August 27, 1984.
33. American Institute For Shippers' Associations, Inc. August 28, 1984.
34. North Atlantic/United Kingdom Freight Conference; North Atlantic/French Atlantic Freight Conference; North Atlantic/ Continental Freight Conference; North Atlantic/Baltic Freight Conference; Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference; Continental North Atlantic Westbound Freight Conference; North Atlantic Westbound Freight Association; United Kingdom & U.S.A. Gulf Westbound Rate Agreement; Continental U.S. Gulf Freight Association; Gulf-United Kingdom Conference; Gulf-European Freight Association; North Europe-U.S. South Atlantic Rate Agreement; U.S. South Atlantic-Europe Rate Agreement. August 28, 1984.
35. Agreement No. 10305. August 29, 1984.
36. Sea-Land Service, Inc. August 27, 1984.
37. American West African Freight Conference. August 30, 1984.
38. Inter-American Freight Conference; Inter-American Freight Conference-Puerto Rico and U.S. Virgin Islands; Inter-American Freight Conference River Plate/Puerto Rico and U.S. Virgin Island/River Plate. August 30, 1984.

39. Trans-Pacific Freight Conference of Japan/Korea; Japan/Korea-Atlantic and Gulf Freight Conference; TransPacific Freight Conference (Hong Kong); New York Freight Bureau; Philippines/North America Conference; and their member lines. August 30, 1984.

List of Comments and Pleadings Filed in Docket No. 84-32

101. The "8900" Lines; Iberian/U.S. North Atlantic Westbound Freight Conference; Marseilles/North Atlantic U.S.A. Freight Conference; Italy, South France, South Spain, Portugal/U.S. Gulf and the Island of Puerto Rico (Med-Gulf) Conference; U.S. Atlantic & Gulf/Australia-New Zealand Conference; U.S. Atlantic Ports/Italy, France and Spain Conference; The West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Conference (WINAC). October 17, 1984.

102. American President Lines, Ltd. October 17, 1984.

103. Council of European & Japanese National Shipowners Associations. October 17, 1984.

104. Far East Conference; Malaysia Pacific Rate Agreement; Pacific/Indonesian Conference; Pacific-Straits Conference. October 18, 1984.

105. The North European Conferences. October 18, 1984.

106. Trans-Pacific Freight Conference of Japan/Korea; Japan/Korea-Atlantic and Gulf Freight Conference; Trans Pacific Freight Conference (Hong Kong); New York Freight Bureau; Philippines/North America Conference. October 22, 1984.

107. Sea-Land Service, Inc. October 22, 1984.

108. Inter-American Freight Conference. October 22, 1984.

109. Atlantic & Gulf/West Coast South America Conference; East Coast/Colombia Conference; West Coast of South America Northbound Conference; United States Atlantic & Gulf/Ecuador Freight Conference; United States Florida/Ecuador Steamship Freight Association; United States Atlantic & Gulf/Venezuela Freight Association. October 22, 1984.

110. United States Atlantic & Gulf/Southeastern Caribbean Conference; United States Atlantic & Gulf/Jamaica and Hispaniola Steamship Freight Association; United States South Atlantic & Gulf/Panama & Costa Rica Rate Agreement; United States Atlantic Gulf/Guatemala, Honduras & El Salvador Rate Agreement. October 22, 1984.

List of Subjects in 46 CFR Part 572.

Antitrust, Contracts, Maritime carriers, Administrative practice and procedure, Rates and fares, Reporting and recordkeeping requirements.

By the Commission.

Francis C. Hurney,

Secretary.

Therefore, pursuant 5 U.S.C. 553; and sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17, and 18 of the Shipping Act of 1984 (46 U.S.C. app. 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1709, 1710, 1712, 1714, 1715, 1716 and 1717) Part 572 of Title 46, Code of Federal Regulations, is revised to read as follows:

PART 572—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

Subpart A—General Provisions

Sec.

572.101 Authority.
572.102 Purpose.
572.103 Policies.
572.104 Definitions.

Subpart B—Scope

572.201 Subject agreements.
572.202 Non-subject agreements.

Subpart C—Exemptions

572.301 Exemption procedures.
572.302 Non-substantive agreements and non-substantive modifications to existing agreements—exemption.
572.303 Husbanding agreements—exemption.
572.304 Agency agreements—exemption.
572.305 Equipment interchange agreements—exemption.
572.306 Non-exclusive transshipment agreements—exemption.

Subpart D—Filing and Form of Agreements

572.401 Filing of agreements.
572.402 Form of agreements.
572.403 Modification of agreements.
572.404 Application for waiver.
572.405 Information Form.
572.406 Complete and definite agreements.

Subpart E—Content and Organization of Agreements

572.501 Agreement provisions—organization.
572.502 Organization of conference and interconference agreements.

Subpart F—Action on Agreements

572.601 Preliminary review—rejection of agreements.
572.602 **Federal Register** notice.
572.603 Comment.
572.604 Waiting period.
572.605 Requests for expedited approval.
572.606 Requests for additional information.
572.607 Failure to comply with requests for additional information.
572.608 Confidentiality of submitted material.
572.609 Negotiations.

Subpart G—Reporting and Record Retention Requirements

572.701 General requirements.
572.702 Filing of reports related to shippers' requests and complaints and consultations.
572.703 Filing of minutes.
572.704 Index of documents.
572.705 Waiver of reporting and record retention.

Subpart H—[Reserved]

Subpart I—Penalties

572.901 Failure to file.
572.902 Falsification of reports.

Subpart J—Paperwork Reduction

572.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
Appendix A to Part 572—Information Form and Instructions

Authority: Secs. 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17 and 18, of the Shipping Act of 1984 (46 U.S.C. app. 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1709, 1710, 1712, 1714, 1715, 1716 and 1717).

Subpart A—General Provisions

§ 572.101 Authority.

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act (U.S.C. 553), and sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17 and 18 of the Shipping Act of 1984 ("the Act").

§ 572.102 Purpose.

This part implements those provisions of the Act which govern agreements by or among ocean common carriers and agreements (to the extent the agreements involve ocean transportation in the foreign commerce of the United States) among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers. This part also sets forth more specifically certain procedures provided for in the Act.

§ 572.103 Policies.

(a) The Act requires that agreements be processed and reviewed according to strict statutory deadlines. This part is intended to establish procedures for the orderly and expeditious review of filed agreements in accordance with the statutory requirements.

(b) The Act requires that agreements be reviewed in accordance with a general standard as set forth in section 6(g) of the Act and empowers the Commission to obtain certain information to conduct that review. This part sets forth the kind of information for particular types of agreements which the Commission believes relevant to that review. Only that information which is relevant to such a review is requested. It is the policy of the Commission to keep the costs of regulation to a minimum and at the same time obtain information needed to fulfill its statutory responsibility.

(c) In order to further the goal of expedited processing and review, agreements are required to meet certain minimum requirements as to form. These requirements are intended to ensure expedited review and should assist parties in preparing agreements. These requirements as to form do not

affect the substance of an agreement and are intended to allow parties the freedom to develop innovative commerical relationships and provide efficient and economic transportation systems.

(d) The Act itself excludes certain agreements from filing requirements and authorizes the Commission to exempt other classes of agreements from any requirement of the Act or this part. In order to minimize delay in implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, the Commission is exempting certain classes of agreements from the filing or information requirements of this part.

(e) Under the new regulatory framework established by the Act, the role of the Commission as a monitoring and surveillance agency has been enhanced. The Act favors greater freedom in allowing parties to form their commercial arrangements. This, however, requires greater monitoring of agreements after they have become effective. The Act empowers the Commission to impose certain recordkeeping and reporting requirements. This part identifies those classes of agreements which require specific record retention and reporting to the Commission and prescribes the applicable period of record retention, the form and content of such reporting, and the applicable time periods for filing with the Commission. These requirements assure that Commission monitoring responsibilities will be fulfilled.

(f) The Act requires that conference agreements must contain certain mandatory provisions. Each such agreement must: (1) state its purpose; (2) provide reasonable and equal terms and conditions for admission and readmission to membership; (3) allow for withdrawal from membership upon reasonable notice without penalty; (4) require an independent neutral body to police the conference, if requested by a member; (5) prohibit conduct specified in sections 10(c)(1) or 10(c)(3) of the Act; (6) provide for a consultation process; (7) establish procedures for considering shippers' requests and complaints; and (8) provide for independent action. Parties to conference agreements are free to develop their own mandatory provisions in accordance with the requirements of section 5(b) of the Act.

(g) An agreement filed under the Act must be clear and definite in its terms, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their present operations and regulate the relationships among the agreement members.

§ 572.104 Definitions.

When used in this part:

(a) *Agreement* means an understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) entered into by or among ocean common carriers and/or marine terminal operators, but does not include a maritime labor agreement.

(b) *Antitrust Laws* means the Act of July 2, 1890 (ch. 647, 26 Stat. 209), 15 U.S.C. 1, as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), 15 U.S.C. 12, as amended; the Federal Trade Commission Act (38 Stat. 717), 15 U.S.C. 41, as amended; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), 15 U.S.C. 8, 9, as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), 15 U.S.C. 13, as amended; the Antitrust Civil Process Act (76 Stat. 548), 15 U.S.C. 1311, note as amended; and amendments and Acts supplementary thereto.

(c) *Appendix* means a document containing additional material of limited application and appended to an agreement, distinctly differentiated from the main body of the basic agreement.

(d) *Assessment agreement* means an agreement, whether part of a collective bargaining agreement or negotiated separately, to the extent that it provides for the collectively bargained fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized.

(e) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that: (1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and (2) utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

(f) *Conference agreement* means an agreement between or among two or more ocean common carriers or between or among two or more marine terminal operators for the conduct or facilitation of ocean common carriage and which provides for: (1) The fixing of and adherence to uniform rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members; (2) the conduct of the collective administrative affairs of the group; and (3) may include the filing of a common tariff in the name of the group and in which all the members participate, or, in the event of multiple tariffs, each member must participate in at least one such tariff. The term does not include consortium, joint service, pooling, sailing or transshipment agreements.

(g) *Consultation* means a process whereby a conference and a shipper confer for the purpose of promoting the commercial resolution of disputes and/or the prevention and elimination of the occurrence of malpractices.

(h) *Cooperative working agreement* means an agreement which establishes exclusive, preferential, or cooperative working relationships which are subject to the Shipping Act of 1984, but which do not fall precisely within the arrangements of any specifically defined agreement.

(i) *Effective agreement* means an agreement approved pursuant to section 15 of the Shipping Act, 1916 or effective pursuant to an exemption under that Act, or filed and/or effective under the Act.

(j) *Equal access agreement* means an agreement between ocean common carriers of different nationalities, as determined by the incorporation or domicile of the carriers' operating companies, whereby such common carriers associate for the purpose of gaining reciprocal access to cargo which is otherwise reserved by national decree, legislation, statute or regulation to carriage by the merchant marine of the carriers' respective nations.

(k) *Independent neutral body* means a disinterested third party, authorized by a conference and its members to review, examine and investigate alleged breaches or violations by any member of the conference agreement and/or the agreement's properly promulgated tariffs, rules or regulations.

(l) *Information Form* means the form containing economic information which must accompany the filing of certain kinds of agreements.

(m) *Interconference agreement* means an agreement between conferences.

(n) *Joint service/consortium agreement* means an agreement between ocean common carriers operating as a joint venture whereby a separate service is established which: (1) Holds itself out in its own distinct operating name; (2) independently fixes its own rates, charges, practices and conditions of service or chooses to participate in its operating name in another agreement which is duly authorized to determine and implement such activities; (3) independently

publishes its own tariff or chooses to participate in its operating name in an otherwise established tariff; (4) issues its own bills of lading; and (5) acts generally as a single carrier. The common use of facilities may occur and there is no competition between members for traffic in the agreement trade; but they otherwise maintain their separate identities.

(o) *Marine terminal facilities* means one or more structures (and services connected therewith) comprising a terminal unit, including, but not limited to docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage space, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers or the interchange of same between land and ocean common carriers or between two ocean common carriers. This term is not limited to waterfront or port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne cargo may be tendered to the consignee or outbound cargo may be received from shippers for vessel or container loading.

(p) *Marine terminal operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier. This term does not include shippers or consignees who exclusively furnish marine terminal facilities or services in connection with tendering or receiving proprietary cargo from a common carrier by water.

(q) *Maritime labor agreement* means a collective-bargaining agreement between an employer subject to the Act or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multiemployer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing or administration of a multiemployer bargaining group; but the term does not include an assessment agreement.

(r) *Modification* means any change, alteration, correction, addition, deletion, or revision of an existing effective agreement or to any appendix to such an agreement.

(s) *Non-vessel-operating common carrier* means a common carrier that does not operate the vessels by which the ocean transportation portion is provided and is a "shipper" in its relationship with an ocean common carrier.

(t) *Ocean common carrier* means a vessel-operating common carrier, but the term does not include one engaged in ocean transportation by ferry boat or an ocean tramp.

(u) *Ocean freight forwarder* means a person in the United States that (1) dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers, and (2) processes the documentation or performs related activities incident to those shipments

(v) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(w) *Pooling agreement* means an agreement between ocean common carriers which provides for the division of cargo carryings, earnings, or revenue and/or losses between the members in accordance with an established formula or scheme.

(x) *Port* means the place at which an ocean common carrier originates or terminates (and/or transships) its actual ocean carriage of cargo or passengers as to any particular transportation movement.

(y) *Sailing agreement* means an agreement between ocean common carriers which provides for the rationalization of service by establishing a schedule of ports which each carrier will serve and/or the frequency of each carrier's calls at those ports.

(z) *Service contract* means a contract between a shipper or shippers' association and an ocean common carrier or conference in which the shipper or shippers' association makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of either party.

(aa) *Shipper* means an owner or other person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(bb) *Shippers' association* means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(cc) *Shippers' requests and complaints* means a communication from a shipper to a conference requesting a change in tariff rates, rules, regulations, or service; protesting or objecting to existing rates, rules, regulations or service; objecting to rate increases or other tariff changes; protesting allegedly erroneous service contract or tariff implementation or application, and/or requesting to enter into a service contract. Routine information requests are not included in the term.

(dd) *Space charter agreement* means an agreement between ocean common carriers whereby a carrier (or carriers) agrees to provide vessel capacity for the use of another carrier (or carriers) in exchange for compensation or services. The arrangement may include arrangements for equipment interchange and receipt/delivery of cargo.

(ee) *Through transportation* means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is an ocean common carrier, between a United States point or port and a foreign point or port.

(ff) *Transshipment agreement* means an agreement between an ocean common carrier serving a port or point of origin and another such carrier serving a port or point of destination, whereby cargo is transferred from one carrier to another carrier at an intermediate port served by direct vessel call of both such carriers in the conduct of through transportation. Such an agreement does not provide for the concerted discussion, publication or otherwise fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the transshipment service offered, the port of transshipment and the participation of the nonpublishing carrier.

Subpart B—Scope

§ 572.201 Subject agreements.

(a) *Ocean common carrier agreements.* This part applies to agreements by or among ocean common carriers to:

(1) Discuss, fix, or regulate transportation rates, including through rates, cargo space recommendations, and other conditions of service;

(2) Pool or apportion traffic, revenues, earnings, or losses;

(3) Allot ports or restrict or otherwise regulate the number and character of sailings between ports;

(4) Limit or regulate the volume or character of cargo or passenger traffic to be carried;

(5) Engage in exlusive, preferential , or cooperative working arrangements among themselves or with one or more marine terminal operators or non-vessel-operating common carriers;

(6) Control, regulate, or prevent competition in international ocean transportation; and

(7) Regulate or prohibit their use of service contracts.

(b) *Marine terminal operator agreements involving foreign commerce.* This part applies to agreements (to the extent the agreements involve ocean transportation in the foreign commerce of the United States) among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers to:

(1) Discuss, fix, or regulate rates or other conditions of service; and

(2) Engage in exclusive, preferential, or cooperative working arrangements.

§ 572.202 Non-Subject agreements.

This part does not apply to the following agreements:

(a) Any acquisition by any person, directly or indirectly, of any voting security or assets of any other person;

(b) Any maritime labor agreement;

(c) Any agreement related to transportation to be performed within or between foreign countries;

(d) Any agreement among common carriers to establish, operate, or maintain a marine terminal in the United States;

(e) Any agreement among marine terminal operators which exclusively and solely involves transportation in the interstate commerce of the United States;

(f) Any agreement exclusively and solely among non-vessel-operating common carriers;

(g) Any agreement exclusively and solely among ocean freight forwarders.

Subpart C—Exemptions

§ 572.301 Exemption procedures.

(a) *Authority.* The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Act from any requirement of the Act if it finds that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in substantial reduction in competition, or be detrimental to commerce.

(b) *Optional filing.* Notwithstanding any exemption from filing, Information Form, or other requirements of the Act and this part, any party to an exempt agreement may file such an agreement with the Commission.

(c) *Application for exemption.* Any person may apply for an exemption or revocation of an exemption of any class of agreements or an individual agreement pursuant to section 16 of the Act and this subpart. An application for exemption shall state the particular requirement of the Act for which exemption is sought. The application shall also include a statement of the reasons why an exemption should be granted or revoked and shall provide information relevant to any finding required by the Act. Where an application for exemption of an invdividual agreement is made, the application shall include a copy of the agreement.

(d) *Participation by interested persons.* No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

(e) **Federal Register** *notice.* Notice of any proposed exemption or revocation of exemption, whether upon application or upon the Commission's own motion, shall be published in the **Federal Register.** The notice shall include:

(1) A short title for the proposed exemption or the title of the existing exemption;

(2) The identity of the party proposing the exemption or seeking revocation;

(3) A concise summary of the agreement or class of agreements for which exemption is sought, or the exemption which is to be revoked;

(4) A statement that the application and any accompanying information are available for inspection in the Commission's offices in Washington, D.C.; and

(5) The final date for filing comments regarding the application.

(f) *Retention of agreement by parties.* Any agreement which has been exempted by the Commission pursuant to section 16 of the Act shall be retained by the parties and shall be available upon request by the Bureau of Agreements and Trade Monitoring for inspection during the term of the agreement and for a period of three years after its termination.

§ 572.302 Non-substantive agreements and non-substantive modifications to existing agreements—exemption.

(a) A non-substantive agreement or a non-substantive modification to an existing agreement is an agreement between ocean common carriers and/or marine terminal operators, acting individually or through approved agreements, which:

(1) Concerns the procurement, maintenance, or sharing of office facilities, furnishings, equipment and supplies, the allocation and assessment of the costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals.

(2) Reflects changes in the name of any geographic locality stated therein; the name of the agreement or the name of a party to the agreement; the names and/or numbers of any other section 4 agreement or designated provisions thereof referred to in an agreement; the table of contents of an agreement; the date or amendment number through which agreements state they have been reprinted to incorporate prior revisions thereto or which corrects typographical and grammatical errors in the text of the agreement; or renumbers or reletters articles or subarticles of agreements and references thereto in the text.

(3) Reflects changes in the titles or persons or committees designated therein or transfers the functions of such persons or committees to other designated persons or committees or which merely establishes a committee.

(b) A copy of the non-substantive modification shall be submitted for information purposes in the proper format but is otherwise exempt from the Information Form, notice and waiting period requirements of this part.

(c) Parties to agreements may seek a determination from the Director, Bureau of Agreements and Trade Monitoring as to whether a particular modification is non-substantive.

§ 572.303 Husbanding agreements—exemption.

(a) A husbanding agreement is an agreement between a principal and an agent both of which are subject to the Act and which provides for the agent's handling of routine vessel operating activities in port, such as notifying port officials of vessel arrivals and departures; ordering pilots, tugs, and linehandlers; delivering mail; transmitting reports and requests from the Master to the owner/operator; dealing with passenger and crew matters; and providing similar services related to the above activities. The term does *not* include an agreement which provides for the solicitation or booking of cargoes, signing contracts or bill of lading and other related matters, nor does it include an agreement that prohibits the agent from entering into similar agreements with other carriers.

(b) A husbanding agreement is exempt from the filing and Information Form requirements of the Act and of this part.

§ 572.304 Agency agreements—exemption.

(a) An agency agreement is an agreement between a principal and an agent both of which are subject to the Act, which provides for the agent's solicitation and booking of cargoes and signing contracts of affreightment and bills of lading on behalf of an ocean common carrier. Such an agreement may or may not also include husbanding service functions and other functions incidental to the performance of duties by agents, including processing of claims, maintenance of a container equipment inventory control system, collection and remittance of freight and reporting functions.

(b) An agency agreement between persons subject to the Act is exempt from the filing and Information Form requirements of the Act and of this part, except those: (1) Where a common carrier is to be the agent for a competing carrier in the same trade; or (2) which permit an agent to enter into similar agreements with more than one carrier in a trade.

§ 572.305 Equipment interchange agreements—exemption.

(a) An equipment interchange agreement is an agreement between two or more ocean common carriers for (1) the exchange of empty containers, chassis, empty LASH/SEABEE barges, and related equipment; and (2) the transportation of the equipment as required, payment therefor, management of the logistics of transferring, handling and positioning equipment, its use by the receiving carrier, its repair and maintenance, damages thereto, and liability incidental to the interchange of equipment.

(b) An equipment interchange agreement is exempt from the filing and Information Form requirements of the Act and of this part.

§ 572.306 Nonexclusive transshipment agreements—exemption.

(a) A nonexclusive transshipment agreement is an agreement by which one ocean common carrier serving a port of origin by direct vessel call and another such carrier serving a port of destination by direct vessel call provide transportation between such ports via an intermediate port served by direct vessel call of both such carriers and at which cargo will be transferred from one to the other and which agreement does not: (1) Prohibit either carrier from entering into similar agreements with other carriers; (2) guarantee any particular volume of traffic or available capacity; or (3) provide for the discussion or fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the service offered as being by means of transshipment, the port of transshipment and the participation of the nonpublishing carrier.

(b) A nonexclusive transshipment agreement is exempt from the filing and Information Form requirements of the Act and of this part, provided that the tariff provisions set forth in paragraph (c) of this section and the content requirements of paragraph (d) of this section are met.

(c) The applicable tariff or tariffs shall provide:

(1) The through rate;

(2) The routings (origin, transshipment and destination ports); additional charges, if any (*i.e.* port arbitrary and/or additional transshipment charges); and participating carriers; and

(3) A tariff provision substantially as follows:

> The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating, connecting or feeder carrier. Every participating connecting or feeder carrier which is a party to transshipment arrangements has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(d) Nonexclusive transshipment agreements must contain the entire arrangement between the parties, must contain a declaration of the nonexclusive character of the arrangement and may provide for:

(1) The identification of the parties and the specification of their respective roles in the arrangement;

(2) A specification of the governed cargo;

(3) The specification of responsibility for the issuance of bills of lading (and the assumption of common carriage-associated liabilities) to the cargo interests;

(4) The specification of the orgin, transshipment and destination ports;

(5) The specification of the governing tariff(s) and provision for their succession;

(6) The specification of the particulars of the nonpublishing carrier's concurrence/participation in the tariff of the publishing carrier;

(7) The division of revenues earned as a consequence of the described carriage;

(8) The division of expenses incurred as a consequence of the described carriage;

(9) Termination and/or duration of the agreement;

(10) Intercarrier indemnification or provision for intercarrier liabilities consequential to the contemplated carriage and such documentation as may be necessary to evidence the involved obligations;

(11) The care, handling and liabilities for the interchange of such carrier equipment as may be consequential to the involved carriage;

(12) Such rationalization of services as may be necessary to ensure the cost effective performance of the contemplated carriage; and

(13) Such agency relationships as may be necessary to provide for the pickup and/or deliver of the cargo.

(e) No subject other than as listed in paragraph (d) of this section may be included in exempted nonexclusive transshipment agreements.

Subpart D—Filing and Form of Agreements

§ 572.401 Filing of agreements.

(a) All agreements (including oral agreements reduced to writing in accordance with the Act) subject to this part and filed with the Commission for review and disposition pursuant to section 6 of the Act, shall be submitted during regular business hours to the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Such filing shall consist of:

(1) A true copy and 15 additional copies of the filed agreement;

(2) Where required by these regulations, an original and two copies of the completed Information Form referenced at §§ 572.403(a) and 572.405 and Appendix A of this part; and

(3) A letter of transmittal as described in paragraph (b) of this section.

(b)(1) A filed agreement, to include such supporting documents as are submitted, shall be forwarded to the Commission via a letter of transmittal.

(2) The letter of transmittal shall: (i) Identify all of the documents being transmitted including, in the instance of a modification to an effective agreement, the full name of the effective agreement, the Commission-assigned ageeement number of the effective agreement and the revision, page and/or appendix number of the modification being filed; (ii) provide a concise, succinct summary of the filed agreement or modification separate and apart from any narrative intended to provide support for the acceptability of the

agreement or modification; (iii) clearly provide the typewritten or otherwise imprinted name, position, business address and telephone number of the forwarding party; and, (iv) be signed in the original by the forwarding party or on the forwarding party's behalf by an authorized employee or agent of the forwarding party.

(3) To facilitate the timely and accurate publication of the **Federal Register** Notice, the letter of transmittal shall also provide a current list of the agreement's participants where such information is not provided elsewhere in the transmitted documents.

(c) Any agreement and accompanying Information Form which does not meet the filing requirements of this section shall be rejected in accordance with § 572.601.

(d) Assessment agreements shall be filed and shall become effective upon filing. Assessment agreements need not be accompanied by an Information Form.

(e)(1) Expiration dates to existing agreements or specific provisions thereof, shall remain in effect on and after June 18, 1984.

(2) Parties to agreements with expiration dates shall file any modification seeking renewal for a specific term or elimination of a termination date in sufficient time to accommodate the waiting period required under the Act.

§ 572.402 Form of agreements.

The requirements of this section apply to all agreements except for cancellations, marine terminal agreements, and assessment agreements.

(a) Agreements shall be clearly and legibly typewritten on one side only of 8½ inch by 11 inch durable white loose-leaf paper, providing a margin of not less than three-quarters of an inch on all edges.

(b) The first page of every agreement or appendix shall be the Title Page and shall include:

(1) The name in which the agreement holds out service, or, in the absence of such a holding out, the full name of the agreement;

(2) Once assigned, the Commission-assigned agreement number;

(3) The generic classification of the agreement in conformity with the definitions in § 572.104;

(4) The date on which the entire agreement was last republished in accordance with § 572.403(g); and

(5) If applicable, the currently effective expiration date of the agreement and/or any specific provision thereof.

(c) Each agreement page (including modifications and appendices) shall be identified by printing the agreement name (as shown on the agreement Title Page) and, once assigned, the applicable Commission-assigned agreement number at the top of each page.

(d) Each agreement, appendix and/or modification filed will be accompanied by a separate signature page, appended as the last page of the item, which is signed in the original by each of the parties personally or by an authorized representative, indicating immediately below each such signature, the typewritten full name of the signing party and his or her position, including organizational affiliation.

(e) The body of the agreement shall contain:

(1) Immediately following the Title Page, a Table of Contents providing for the location of all agreement provisions.

(2) Following the Table of Contents, the body of the agreement setting forth the operative provisions of the agreement in the order prescribed by §§ 572.501 and 572.502. Any additional material/provisions shall be set forth as consecutively numbered articles.

(f) Any nonsubstantive provisions, as defined in § 572.302, may be separated from the main body of the agreement text by the inclusion of an Appendix to the agreement. Additional provisions which are permitted to be included in an Appendix are referred to in §§ 572.501(b)(3), 572.501(b)(6) and 572.502(a)(1). Such appendices must comply with the format requirements of paragraphs (a) and (c) of this section. Such appendices are to be serialized alphabetically with the first such Appendix being designated on its first page as "Appendix A."

(g) All pages subsequent to the Title Page shall be numbered in the upper right-hand corner. At the option of the parties, the numbering of the pages may start with the first page following the Title Page as Page No. 1 and continue consecutively thereafter; or, in the alternative, the pages containing the Table of Contents may be discretely numbering using consecutive Roman numerals with all pages subsequent to the Table of Contents being consecutively numbered beginning with Page No. 1. In either event, the first edition of any one page shall be designated in the upper right-hand corner as "Original Page No. ——."

(h) All agreements shall conform to the format requirements of this section and § 572.403 and the organization and content requirements of §§ 572.501 and 572.502 according to the following schedule.

(1) Any new agreement shall conform when initially filed.

(2) Any restatement of a previously effective agreement filed subsequent to December 15, 1984, shall conform to the requirements.

(3) Any effective agreement which is modified subsequent to December 15, 1984, shall be restated in its entirety, including the modification, and shall conform to the requirements.

(4) Any other agreement not otherwise brought into conformity with these requirements shall be conformed and filed no later than October 1, 1985.

§ 572.403 Modification of agreements.

The requirements of this section apply to all agreements except for marine terminal agreements and assessment agreements.

(a)(1) Agreement modifications shall be: filed in accordance with the provisions of § 572.401; in the format specified in § 572.402 and this section; and accompanied by an Information Form.

(2) The Information Form shall be completed as it pertains to significant modifications of the agreement.

(3) Significant modifications, for the purposes of this section, are those that may result in a significant reduction in competition. Such modifications include but are not limited to: significant changes in the geographic scope of conference or pooling agreements which expand the scope to cover additional foreign countries or U.S. port ranges, including initial conference intermodal authority, or the extension of the scope of a joint service agreement to ports outside the scope of the existing joint service agreement currently served by two or more of the parties; additions to the number of parties in pooling or joint service agreements; significant reductions in service levels; significant changes in pool penalty provisions or carrying charges; and changes in cargo categories or descriptions that result in a significant increase in the amount of cargo subject to the pool, or changes in the allocation of cargo or revenue that significantly change the cargo or revenue shares of national or non-national flag lines.

(b) Agreement modifications shall be made by reprinting the entire page on which the matter being changed is published. Such modified pages shall be designated as "revised pages" and shall publish in the upper right-hand corner of the new page the consecutive denomination of the revision, e.g., "1st Revised Page 5."

(c) If a modification exceeds the page being modified and the parties do not

wish to modify the entire agreement, the additional material may be published on an original page, designated with the same number as the page being modified and with an alphabetical suffix, i.e. "Original Page 5a."

(d) The language being modified shall be indicated on the page filed as follows:

(1) Language being deleted or superseded shall be struck through; and,

(2) New and initial or replacement language shall immediately follow the language being superseded and be underlined.

(3) As an alternative to publishing such indications of change on the filed page, the filed page may be submitted devoid of such indications if the filing is accompanied by a page, submitted for information/illustration only, setting forth the proposed modifications in accordance with the format prescribed in paragraphs (d) (1) and (2) of this section.

(e) When a revised or new page is revised, or the entire agreement is reissued, the change indications in paragraphs (d)(1) and (d)(2) of this section are to be deleted from the republished pages.

(f) If a modification requires the relocation of the provisions of the agreement, such modification shall be accompanied by a revised Table of Contents page which shall report the new location of the agreement's provisions.

(g)(1) In the instance of an agreement which publishes the indications of modifications, specified in paragraph (d) of this section on the filed agreement page itself, then, not later than two years after the last modification to the agreement, the entire agreement shall be republished incorporating such modifications as have been made and shall supersede the previous edition of the agreement.

(2) Such republished agreement will be filed with the Commission in accordance with the filing (except as provided in paragraph (g)(3) of this section), format and content requirements of this part and shall contain nothing other than the previously effective language and such nonsubstantive modifications as are necessary to accomplish the republication.

(3) It is not required that the filing of a republished agreement as described in paragraph (g)(2) of this section, be accompanied by the Information Form or that it be filed in more than an executed original true copy.

§ 572.404 Application for waiver.

(a) Upon a showing of good cause, the Commission may waive the form, organization and content requirements of §§ 572.401, 572.402, 572.403, 572.501 and 572.502.

(b) Requests for permission to depart from the form requirements of this subpart shall be submitted in advance of the filing or submission of the materials to which the requested waiver would apply and shall state: (1) the specific regulations from which relief is sought; (2) the special circumstances requiring the requested relief; and, (3) the beneficial results anticipated to be obtained from the requested waiver.

§ 572.405 Information Form.

(a)(1) Except for marine terminal agreements and assessment agreements, the information required by the Commission for review of an agreement shall be provided in the Information Form set forth in Appendix A to this part.

(2) The filing party to an agreement subject to the Act shall complete and submit an original and two copies of the Information Form at the time that an agreement is filed. The Information Form shall be completed in accordance with this subpart, including the Instructions set forth in Appendix A. Copies of the form may be obtained in person at the Office of the Secretary or by writing to the Secretary of the Commission.

(b) A complete response in accordance with the Instructions to the Information Form shall be supplied to each item on the Information Form that is required to be answered. Whenever the party answering a required part of the Information Form (other than Parts III and IV) is unable to supply a complete response, that party shall provide,for each item for which less than a complete response has been supplied, either estimated data (with an explanation of why precise data are not available) or a detailed statement of reasons for noncompliance and the efforts made to obtain the required information. Use of estimated data with Parts III and IV requires no explanation of why precise data are not available.

(c) Any party filing the Information Form may supplement that Form with any other information or documentary material.

(d) The Information Form and any additional information submitted by a filing party under this section shall not be disclosed except as provided in § 572.608.

§ 572.406 Complete and definite agreements.

(a) Any agreement required to be filed by the Act and this part shall be the complete agreement among the parties and shall specify in detail the substance of the understanding of the parties.

(b) Except as provided in paragraph (c) of this section, agreement clauses which contemplate a further agreement or give the parties authority to discuss and/or negotiate a further agreement, the terms of which are not fully set forth in the enabling agreement, will be permitted only if the enabling agreement indicates that any such further agreement cannot go into effect unless filed and effective under the Act.

(c) Further specific agreements or understandings which are established pursuant to express enabling authority in an agreement are considered interstitial implementation and are permitted without further filing under section 5 of the Act only if the further agreement concerns routine operational or administrative matters, including the establishment of tariff rates, rules, and regulations.

Subpart E—Content and Organization of Agreements

§ 572.501 Agreement provisions—organization.

(a) All agreements, except for cancellations, marine terminal agreements, and assessment agreements, shall be organized and shall include the content as provided by this section. The "article" numbers hereinafter enumerated are reserved for their particular respective provision or authority as indicated in this section and § 572.502 and may not be used for any other subject or purpose nor may the specified subject matter appear elsewhere in the agreement except as herein provided. In the instance of a legitimately inapplicable provision, the article number and title are to be included in the text followed by the word, "None".

(b) All agreements shall organize and number the following articles in the following order and shall observe the guidelines as to content as provided in this section. Additional articles required to definitively express the complete understanding between the parties to the agreement and not otherwise incorporated in appendices to the agreement shall immediately follow the articles enumerated in this subpart (and, where applicable, in § 572.502) and shall be numbered consecutively, commencing with Article 14.

1. *Article 1—Full name of the agreement.*

2. *Article 2—Purpose of the agreement.*

3. *Article 3—Parties to the agreement.* List the current parties to the agreement to include for each participant: (i) the full legal name of the party to include any FMC-assigned agreement number associated with that name; and (ii) the address of its principal office (to the exclusion of the address of any agent or representative not an employee of the participating carrier or association). In the alternative to publishing the membership of the agreement in Article 3, the membership may be published in a designated appendix to the agreement and the designated appendix indicated by cross reference in Article 3.

(4) *Article 4—Geographic scope of the agreement.* State the ports or port ranges to which the agreement applies and any inland points or areas to which it also applies with respect to the exercise of the collective activities contemplated and authorized in the agreement.

(5) *Article 5—Overview of Agreement Authority.* State the authorities, as set forth in § 572.201 of this part, intended to be collectively exercised under the auspices of the agreement. To the extent that the summary provided does not represent the full arrangement between the parties, additional articles or appendices of the parties' own designation and subsequent to these enumerated articles will be required to provide the specification of the authority to be exercised and the mechanics of that exercise. Unless it is unsupported by such further explanation, Article 5 is not deemed to be definitive of the authority that the parties may collectively exercise pursuant to the agreement.

(6) *Article 6—Officials of the agreement and delegations of authority.* Specify, by organizational title, the administrative and executive officials determined by the parties to the agreement to be responsible for designated affairs of the agreement and the respective duties and authorities delegated to those officials. At a minimum: (i) the officials with authority to file agreements and agreement modifications and to submit associated supporting materials or with authority to delegate such authority; and, (ii) a statement as to any designated U.S. representative of the agreement required by this chapter. Where convenient, the contents of this article may be published in a designated appendix to the agreement and the designated appendix indicated by cross reference in Article 6.

(7) *Article 7—Membership, withdrawal, readmission and expulsion.* Specify the terms and conditions for admission, withdrawal, readmission and expulsion to or from membership in the agreement, including membership fees, refundable deposits and other fees or charges associated with membership. Two-party agreements which do not involve any form of rate, charge or tariff determination or publication authority and which do not otherwise have any conditions of agreement participation other than the commitment of the physical resources of the respective parties are relieved of the requirements of this subparagraph. In such eventuality, the article number and name shall be accounted for as provided in paragraphs (a) and (b)(1) of this section.

(8) *Article 8—Voting.* Specify the procedures, including quorum requirements, by which the agreement membership exercises its collective authority to choose, endorse, decide the disposition of, defeat, or authorize any particular matter, issue or activity.

(9) *Article 9—Duration and termination of the agreement.* Specify, where applicable, the date on which the agreement terminates and describe the procedures to be followed to terminate the agreement.

§ 572.502 Organization of conference and interconference agreements.

(a) Each conference agreement in addition to Articles 1 through 9 contained in § 572.501, and such other matters as may be necessary to express the full understanding of the parties, shall include the following articles organized and including the content as provided in this section:

(1) *Article 10—Neutral body policing.* State that, at the request of any member, the conference shall engage the services of an independent neutral body to fully police the obligations of the conference and its members. Include a description of any such neutral body authority and procedures related thereto. In the alternative to publishing the neutral body and procedures description in Article 10, the description may be published in a designated appendix to the agreement and the designated appendix indicated by cross reference in Article 10.

(2) *Article 11—Prohibited acts.* State affirmatively that the conference shall not engage in conduct prohibited by section 10(c)(1) or 10(c)(3) of the Act.

(3) *Article 12—Consultation: Shippers' requests and complaints.* Specify the procedures for consultation with shippers and for handling shippers' requests and complaints.

(4) *Article 13—Independent action.* Specify the independent action procedures of the conference. Such procedures shall provide that any conference member may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the Act upon not more than 10 calendar days' notice to the conference and shall otherwise be in conformance with section 5(b)(8) of the Act.

(b)(1) Each interconference agreement, in addition to Articles 1 through 9 contained in § 572.501, and Articles 10, 11, and 12 contained in paragraph (a) of this section, shall include the following article: *"Article 13—Independent Action"* which specifies the independent action procedures of the agreement.

(2) Each agreement between carriers not members of the same conference must provide the right of independent action for each carrier.

(3) Each agreement between conferences must provide the right of independent action for each conference.

Subpart F—Action on Agreements

§ 572.601 Preliminary review—rejection of agreements.

(a) The Commission shall make a preliminary review of each filed agreement to determine whether the agreement is in compliance with the filing requirements of the Act and this part and whether the Information Form is complete or where not complete, the deficiency is adequately explained.

(b)(1) The Commission shall reject any agreement that fails to comply with the filing and information requirements under the Act and of this part. The Commission shall notify in writing the person filing the agreement of the reason for rejection of the agreement. The entire filing, including the agreement, the Information Form and any other information or documents submitted, shall be returned to the filing party.

(2) Should the agreement be refiled, the full waiting period must be observed.

§ 572.602 Federal Register notice.

(a) A notice of any filed agreement which is not rejected pursuant to § 572.601 will be transmitted to the **Federal Register** within seven days of the date of filing.

(b) The notice will include:

(1) A short title for the agreement;

(2) The identity of the parties to the agreement and the filing party;

(3) The Federal Maritime Commission agreement number;

(4) A concise summary of the agreement's contents;

(5) A statement that the agreement is available for inspection at the Commission's offices; and

(6) The final date for filing comments regarding the agreement.

§ 572.603 Comment.

(a) Persons may file with the Secretary written comments regarding a filed agreement. Such comments will be submitted in an original and fifteen (15) copies and are not subject to any limitations except the time limits provided in the **Federal Register** notice. Late-filed comments will be received only by leave of the Commission and only upon a showing of good cause. If requested, comments and any accompanying material shall be accorded confidential treatment to the fullest extent permitted by law. Such requests must include a statement of legal basis for confidential treatment including the citation of appropriate statutory authority. Where a determination is made to disclose all or a portion of a comment, notwithstanding a request for confidentiality, the party requesting confidentiality will be notified prior to disclosures.

(b) The filing of a comment does not entitle a person to: (1) reply to the comment by the Commission; (2) the institution of any Commission or court proceeding; (3) discussion of the comment in any Commission or court proceeding concerning the filed agreement; or (4) participation in any proceeding which may be instituted.

§ 572.604 Waiting period.

(a) The waiting period before an agreement becomes effective shall commence on the date that an agreement is filed with the Commission.

(b) Unless suspended by a request for additional information or extended by court order, the waiting period terminates and an agreement becomes effective on the latter of the 45th day after the filing of the agreement with the Commission or on the 30th day after publication of notice of the filing in the **Federal Register**.

(c) The waiting period is suspended on the date when the Commission, either orally or in writing, requests additional information or documentary materials pursuant to section 6(d) of the Act. The waiting period resumes on the date of receipt of the additional material or of a statement of the reasons for noncompliance, and the agreement becomes effective in 45 days unless the waiting period is further extended by court order.

§ 572.605 Requests for expedited approval.

(a) Upon written request of the filing party, the Commission may shorten the review period. Accompanying the request, the filing party should provide a full explanation, with reference to specific facts and circumstances, of the necessity for a shortened waiting period. If the Commission decides to approve an abbreviated waiting period, the term will be decided after consideration of the parties' needs and the Commission's ability to perform its review functions under a reduced time schedule. In no event, however, may the period be shortened to less than fourteen days after the publication of the notice of the filing of the agreement in the **Federal Register**. When a request for expedited approval is denied by the Commission, the normal waiting period specified in § 572.604 will apply. Such expedition will not be granted routinely and will be granted only in exceptional circumstances which include but are not limited to: the impending expiration of the agreement; operational urgency; Federal or State imposed time limitations; or other reasons which, in the Commission's discretion, constitute grounds for granting the request.

(b) A request for expedited approval will be considered for an agreement whose waiting period has resumed after having been suspended by a request for additional information.

(c) Upon request of the filing party, cancellations of agreements and modifications to the following prescribed agreement provisions will be granted expedited approval fourteen days after publication of notice of filing in the **Federal Register**:

(1) *Article 3*—Parties to the agreement (limited to conference agreements).

(2) *Article 6*—Officials of the agreement and delegations of authority.

(3) *Article 10*—Neutral body policing (limited to the description of neutral body authority and procedures related thereto).

§ 572.606 Requests for additional information.

(a) The Commission may request from the filing party any additional information and documentary material necessary to complete the statutory review required by section 6 of the Act. The request shall be made prior to the expiration of the waiting period. All additional information and documentary material shall be submitted to the Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, Washington, D.C. 20573. If the request is not fully complied with, a statement of reasons for noncompliance shall be provided for each item or portion of such request which is not fully answered.

(b) Where the Commission has made a request for additional information material, the agreement's effective date is 45 days after receipt of the additional material. In the event all material is not submitted, the agreement's effective date will be 45 days after receipt of both the documents and information which are submitted, if any, and the statement indicating the reasons for noncompliance. The Commission may, upon notice to the Attorney General, and pursuant to sections 6(i) and 6(k) of the Act, request the United States District Court for the District of Columbia to further extend the agreement's effective date until there has been substantial compliance.

(c) A request for additional information may be made orally or in writing. In the case of an oral request, a written confirmation of the request shall be mailed to the filing party within seven days of the communication.

(d) The party upon whom a request for additional information is made will have a reasonable time to respond, as specified by the Commission. The test of reasonableness shall be based on the particular circumstances of the request and shall be determined on a case-by-case basis.

(e) Notice that a request for additional information has been made will be published by the Commission and served on commenting parties. Such notice will indicate only that a request has been made and will not specify what information is being sought. Within fifteen (15) days following service of the notice, further comments on the agreement may be filed.

§ 572.607 Failure to comply with requests for additional information.

(a) A failure to comply with a request for additional information results when a person filing an agreement, or an officer, director, partner, agent, or employee thereof fails to substantially respond to the request or does not file a satisfactory statement of reasons for noncompliance. An adequate response is one which directly addresses the Commission's request. When a response is not received by the Commission within a specified time, failure to comply will have occurred.

(b) The Commission may, pursuant to section 6(i) of the Act, request relief from the United States District Court for the District of Columbia when it considers that there has been a failure to substantially comply with a request

for additional information. The Commission may request that the court:

(1) Order compliance with the request; and

(2) At its discretion, grant other equitable relief which under the circumstances seems necessary or appropriate.

(c) Where there has been a failure to substantially comply, section 6(i)(2) of the Act provides that the court shall extend the review period until there has been substantial compliance.

§ 572.608 Confidentiality of submitted material.

(a) Except for an agreement filed under section 5 of the Act, all information submitted to the Commission by the filing party will be exempt from disclosure under 5 U.S.C. 552. Included in this disclosure exemption is information provided in the Information Form, voluntary submission of additional information, reasons for noncompliance, and replies to requests for additional information.

(b) Information which is confidential pursuant to paragraph (a) of this section may be disclosed, however, to the extent:

(1) It is relevant to an administrative or judicial action or proceeding; or

(2) It is in response to a request from either body of Congress or to a duly authorized committee or subcommittee of Congress.

(c) Parties may voluntarily disclose or make information publicly available. If parties elect to disclose information they shall promptly inform the Commission.

§ 572.609 Negotiations.

At any time after the filing of an agreement and prior to the conclusion of judicial injunctive proceedings, the filing party or an authorized representative may submit additional factual or legal support for an agreement or may propose modifications of an agreement. Such negotiations between Commission personnel and filing parties may continue during the pendency of injunctive proceedings. Shippers, other government departments or agencies, and other third parties may not participate in negotiations.

Subpart G—Reporting and record retention requirements

§ 572.701 General requirements.

(a) *Address.* All reports required by this subpart should be addressed to the Commission as follows:

Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, Washington, D.C. 20573

The lower, left-hand corner of the envelope in which each report is forwarded should indicate the subject of the report and the related agreement number. For example: "Minutes, Agreement 5000."

(b) *Serial numbers of reports.* (1) Each report filed with the Commission should be assigned a number for each subject. For example, a conference filing minutes of its first meeting upon the effective date of this rule should assign "Meeting No. 1" to its Minutes, the next meeting will be assigned "Meeting No. 2," and so on. The first Shippers' Request and Complaint report should be designated "Shippers' Request and Complaint Report No. 1," the next report would be "Shippers' Request and Complaint Report No. 2," and so on.

(2) Any conference or rate agreement which, for its own internal purposes, has a system for assigning sequential numbers to its reports in a manner which differs from that set forth in paragraph (b)(1) of this section may continue to utilize its own system in lieu thereof.

(c) *Retention of records.* Each agreement required to file an index of documents pursuant to this subpart shall retain a copy of each document listed for a minimum period of 3 years after the date the document is distributed to the members and shall make it available to the Commission upon written request.

(d) *Request for documents.* Documents may be requested by the Director, Bureau of Agreements and Trade Monitoring, in writing by reference to a specific minute or index, and shall indicate that the documents will be received in confidence. Requested documents shall be furnished by the parties within the time specified.

(e) *Time for filing.* Documents filed on an annual (calendar) year basis shall be filed by February 15 of the following year. Other documents shall be filed within 30 days of the end of a quarter-year, a meeting, or the receipt of a request for documents.

(f) *Confidentiality.* All information submitted to the Commission under this subpart shall be accorded confidential treatment to the fullest extent permitted by law.

§ 572.702 Filing of reports related to shippers' requests and complaints and consultations.

(a) *Shippers' requests and complaints.* (1) Each conference shall file with the Commission an annual report setting forth under established shippers' request and complaint procedures and for each calendar year, a statistical summary separately showing: (i) The total number of shippers' and shippers' associations requests and complaints received; (ii) the total number which were fully granted; (iii) the total number which were partially granted; and (iv) the total number which were denied.

(2) Each report shall also show the total number of requests or complaints which were pending disposition at the start and at the end of the report period.

(3) Each of the totals which are reported to the Commission shall be divided into three categories: (i) those involving rates or charges; (ii) those involving transportation services; and (iii) those involving other matters.

(b) *Consultations.* Each conference shall file with the Commission an annual report setting forth a statistical summary showing separately the total number of shipper and shippers' associations requests for consultations and the total number of consultations during each calendar year under the established consultation procedures. Each of the totals which are reported to the Commission shall be divided into two categories: (1) Consultations involving commercial disputes; and (2) consultations involving cooperation with shippers in preventing and eliminating malpractices.

§ 572.703 Filing of minutes.

(a) *Meetings.* For purposes of this subpart, the term "meeting" shall include any meeting of the parties to the agreement, including meetings of their agents, principals, owners, committees, or subcommittees of the parties authorized to take final action on behalf of the parties. Where the agreement so authorizes, this includes final action by telephonic or personal pools of the membership.

(b) *Content of minutes.* Except as provided in paragraph (c) of this section, conferences, interconference agreements, agreements between a conference and one or more ocean common carriers, pooling agreements, equal access agreements, discussion agreements, marine terminal conferences, and marine terminal rate fixing agreements shall, through a designated official, file with the Commission a report of each meeting defined in paragraph (a) of this section describing all matters within the scope of the agreement which are discussed or considered at any such meeting, and shall indicate the action taken. These reports need not disclose the identity of parties that participated in discussions or the votes taken.

(c) *Exemption.* No minutes need be filed under paragraph (b) of this section with respect to any discussion of or action taken with regard to:

(1) Rates that, if adopted, would be required to be published in the Commodity Rate Section, Class Rate Section, or Open Rate Section of the pertinent tariff on file with the Commission except that this exemption does not apply to discussions limited to general rate policy, general rate changes, the opening or closing of rates, or service or time/volume contracts; or

(2) Purely administrative matters.

§ 572.704 Index of documents.

(a) Each agreement required to file minutes pursuant to § 572.703 shall maintain an index of all reports, circulars, notices, statistics, analytical studies, or other documents, not otherwise filed with the Commission pursuant to this subpart, which are distributed to the member lines and are used to reach a final decision on any of the following matters.

(1) Revenue projections and plans. (This would exclude individual rate adjustments but would include general rate adjustments, surcharges and other items affecting shipper costs.)

(2) Studies regarding proposed changes to the conference agreement or its membership.

(3) Non-conference competition.

(4) Changes in the nature and type of transportation service generally and specifically at individual ports or points.

(5) Trade tonnaging requirements, vessel utilization and vessel replacement plans.

(6) Conference participation in trade (market share).

(7) The exercise of the right of independent action.

(8) Development of transportation technology and intermodal services.

(9) Malpractices.

(10) Use of service contracts, time volume rate schemes and loyalty contracts.

(11) Conference relationship with shippers and shipper groups.

(12) Governmental and other foreign requirements affecting the conference.

(b)(1) Each index required to be maintained by paragraph (a) of this section shall be filed with the Commission on a calendar-year quarterly basis.

(2) Each index must be certified by an official of the agreement as true and correct.

§ 572.705 Waiver of reporting and record retention.

Upon a showing of good cause, the Commission may waive any of the provisions of this subpart.

Subpart H—[Reserved]

Subpart I—Penalties

§ 572.901 Failure to file.

Any person operating under an agreement involving activities subject to the Act pursuant to sections 4 and 5(a) of the Act and this part and not exempted pursuant to section 16 of the Act or excluded from filing by the Act, which has not been filed and has not become effective pursuant to the Act and this part is in violation of the Act and of this part and is subject to the civil penalties set forth in section 13(a) of the Act.

§ 572.902 Falsification of reports.

Knowing falsification of any report required by the Act or this part, including knowing falsification of any item or the Information Form, is a violation of the rules of this part and is subject to the civil penalites set forth in section 13(a) of the Act and may be subject to the criminal penalites provided for in 18 U.S.C. 1001.

Subpart J—Paperwork Reduction

§ 572.991 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control number assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Section	Current OMB control No.
572.101 through 572.902	3072–0045

Appendix A to Part 572—Information Form and Instructions

Explanation and Instructions for Information Form

The following explanation and instructions accompany the Information Form (Form) and are intended to facilitate the completion of the Form. The explanations and instructions should be read in conjunction with the Shipping Act of 1984 (Act) and with 46 CFR Part 572.

All agreements by or among ocean common carriers referenced in 46 CFR 572.201(a) (excluding assessment agreements, marine terminal agreements and those agreements exempted from the filing of the Information Form pursuant to Subpart C of Part 572) and significant modifications to agreements referenced in § 572.403 filed with the Commission must be accompanied by a completed Information Form, which in all cases necessitates the completion of Parts I, II, VI, and IX.

Part V, which requests information on proposed service and any proposed reduction or elimination of service, is required to be completed only by parties filing agreements with service authority.

Completion of Part VII is optional.

Because of their potential substantial anticompetitive implications, parties filing certain types of agreements, namely rate-fixing (including, for example, agreements authorizing conferences, interconference agreements, and agreements between a conference and one or more ocean common carriers), pooling, and joint-service and consortium agreements are required to complete Parts III, IV and VIII of the Form in addition to the above specified parts required to be completed by all filing parties.

Certain parts of the Form request information that may not be readily available to the filing party. Where precise information is not available, best estimates may be supplied. Where estimates are made, they should be identified by the use of the notation "est." Except for Parts III and IV, furnishing an estimate requires a clear explanation of why the precise information is not available. Where such an explanation is provided, the use of estimates will not ordinarily be regarded as a failure to supply a complete response as specified in 46 CFR 572.601, and does not require a separate statement of reasons for noncompliance.

In all parts of the Form where data are requested, the filing party is required to indicate all sources used to obtain such data. Sources should also be specified where estimates have been made by the filing party.

Part by Part Explanation

Part I

Part I requires the filing party to state the full name of the agreement as also provided under 46 CFR 572.501.

Part II(A)

Part II(A) requires the filing party to indicate whether or not the agreement authorizes the parties to collectively fix rates or significantly modifies an agreement with such authority. Rate-fixing may be authorized by a conference agreement, an interconference agreement, or an agreement between a conference and one or more ocean common carriers.

Part II(B)

Part II(B) requires the filing party to indicate whether or not the agreement authorizes the parties to pool cargoes or revenues, or significantly modifies an agreement with such authority.

Part II(C)

Part II(C) requires the filing party to indicate whether or not the agreement authorizes the parties to establish a new joint-service or consortium, or significantly modifies an agreement with such authority.

Background Information to Parts III and IV

If any question in Part II is answered "YES", the filing party is required to complete Parts III, IV and VIII (in addition to completing Parts I, II, VI and IX, which are required to be completed by all filing parties).

The *amount of cargo* is to be measured in appropriate units as determined by the parties (such as revenue tons, weight tons, measurement tons or TEUs). Specify the unit of measurement used.

The relevant trade(s) for the purpose of Parts III and IV is to be determined by the parties. The relevant trade(s) may encompass the entire geographic scope of the agreement, or any combination of U.S. and foreign ports or port ranges or sub-trades within the scope of the agreement as deemed appropriate by the parties. The filing party should clearly identify the relevant trade(s) used for the purposes of completing the Information Form.

Sub-trade is defined as the scope of all liner movements between *each* foreign country and *each* U.S. port range within the scope of the agreement. Each foreign country/U.S. port range pair should be shown separately. Where the agreement covers both U.S. inbound and outbound liner movements, inbound and outbound liner movements should be shown separately.

U.S. port ranges are defined by using the Bureau of Census classification of U.S. Coastal Districts. Thus, the U.S. port ranges are defined as follows:

North Atlantic—Includes ports along the eastern seaboard from the northern boundary of Maine to the southern boundary of Virginia.

South Atlantic—includes ports along the eastern seaboard from the northern boundary of North Carolina to, but not including Key West, Florida. Also included are all ports in Puerto Rico and the U.S. Virgin Islands.

Gulf—Includes all ports along the Gulf of Mexico from Key West, Florida to Brownsville, Texas, inclusive.

South Pacific—Includes all ports in the States of California and Hawaii.

North Pacific—Includes all ports in the States of Oregon, Washington, and Alaska.

Great Lakes—Includes all ports bordering upon the Great Lakes and their connecting waterways as well as all ports in the State of New York on the St. Lawrence River.

Liner service refers to a definite, advertised schedule, giving relatively frequent sailings at regular intervals between specific U.S. ports or port ranges and designated foreign ports or port ranges. *Liner vessels* are defined as those vessels used in a liner service. *Liner cargoes* are cargoes carried on liner vessels in a liner service. A *liner operator* is a vessel operating ocean common carrier engaged in liner service. *Liner movement* is the carriage of liner cargo by liner operators. The above liner terms, definitions and descriptions are only to be used for the purpose of the Information Form.

Market share information should be provided using data for the most recent twelve (12) month period for which data are available. State the period used. Identify all units of measurement and all sources of the data. Data may be estimated. Indicate where estimates are made and describe the basis of their derivation.

Alternative liner routing is defined as liner service between the foreign country specified in the sub-trade and any North American port(s) other than those located within the port range covered by the sub-trade. The alternative liner routing may serve the sub-trade's port(s) and interior point(s) by way of feeder service, transshipment, surface carriage (such as mini-landbridge), or some other form of substituted transport. Alternative liner routing includes only those liner services which compete for cargoes carried in the sub-trade.

Part III(A)

Part III(A) requires the filing party to provide the total amount of cargo carried on *all parties'* liner vessels in each relevant trade within the scope of the agreement over the most recent twelve (12) month period for which data are available.

Part III(B)

Part III(B) requires the filing party to provide the total amount of cargo carried on *all* liner vessels (i.e., both party and non-party carriers) operating in each trade identified in (A) within the scope of the agreement for the most recent twelve (12) month period for which data are available.

Part III(C)

Part III(C) requires the filing party to provide the combined market share of all parties operating in each relevant trade within the scope of the agreement. The market share provided in Part III(C) is the quotient (multiplied by 100) of the total derived in Part III(A) divided by the total derived in Part III(B). The *formula for calculating market share* is as follows:

The total amount of cargo carried on all parties' liner vessels in each relevant trade within the scope of the agreement over the most recent twelve-month period for which data are available divided by the total amount of cargo carried on all liner vessels in each relevant trade within the scope of the agreement over the same twelve-month period; which quotient is multiplied by 100.

The relevant trade(s) identified in III(A) should be clearly identified. Each market share calculation should be based on cargo data for identical relevant trades. The most recent twelve-month period for which data are available is to be the same period of time used both in the calculation of the parties' total liner cargo movements [Part III(A)] and in the calculation of the total sub-trade liner cargo movements for all liner operations [Part III(B)].

Part IV(A)

Part IV(A)(1) requires the filing party to provide, for each relevant trade within the scope of the agreement, the names of all liner operators who are not parties to the agreement, and who were offering liner service in that trade at the time the agreement was filed with the Commission.

Part IV(A)(2) requires the filing party to provide, for each relevant trade, the names of all liner operators serving alternative liner routings who compete for the cargoes carried by the parties.

Part IV(A)(3) requires the filing party to describe the extent of the competition offered by all non-party liner operators, including liner operators directly serving the relevant trade(s) *and* liner operators serving alternative liner routings. A description of the extent of competition should include estimates (or precise information where available) of non-party liner operator market share (shown either for each individual operator or for all operators collectively). Any evidence of underutilized capacity in the alternative liner routings may also be provided. Explain how the non-party market share was derived. Specify the units of measurement used in the calculations. Indicate the source(s) used to provide data or estimates.

Part IV(B)

Part IV(B)(1) requires the filing party to identify to the extent known all significant non-liner competitive substitutes that are available to shippers of commodities historically transported by liner service within the scope of the agreement. Non-liner competitive substitutes may include carriage on a charter or contract basis or on an infrequent, irregular basis by bulk, mix container/bulk, breakbulk or other vessel-type operators. Such substitutes may also include carriage by air freight operators or air passenger operators with available "belly space" for air freight. Such substitutes may provide service to a trade through some form of substituted service (e.g., minilandbridge, transshipment or feeder service) by way of ports within an alternative North American port range(s).

Part IV(B)(2) requires the filing party to estimate the percentage of the total amount of cargo, historically carried in the trade on liner vessels, that has been carried by non-liner competitive substitutes over the most recent twelve (12) month period for which data are available. The intent of Part IV(B)(2) is to determine the amount of liner cargo historically carried in the trade that has been "lost" to non-liner operators. Identify all units of measurement and describe how the percentage was derived. Identify the sources used.

Part V

Part V is required to be completed only by filing parties whose agreements contain service authority, which is defined as including either or both of the following authorities allowing parties to agree between or among themselves: to allocate (or otherwise provide) tonnage or capacity between or among carriers in the relevant trade(s); to establish a schedule of ports which each carrier will serve and/or the frequency of each carrier's calls at those ports. For the singular purpose of the Information Form, "port" means the place with a harbor that an ocean carrier serves either directly by oceangoing vessel or indirectly by feeder service. Port calls are direct or indirect calls at a port by vessels

under the direct operational control of one or more parties to the agreement.

Part V(A)

Part V(A) requires the filing party to identify all U.S. ports expected to be served under this agreement. Include all U.S. ports expected to receive direct liner service (port calls by a party) and indirect liner service (port calls by way of some form of substituted service such as feeder service) where those vessels are under the direct operational control of one or more of the parties to the agreement. The identification of other forms of indirect service under the agreement, such as intermodal service (e.g., interior point or minilandbridge) or transshipment may be provided if the parties believe that such information will assist and expedite the Commission's analysis of the agreement's impact on service.

Part V(B)

Part V(B)(1) requires the filing party to specify any party's reduction in frequency of service to any U.S. port within the scope of the agreement where the reduction of service to that port occurs as a result of the implementation of the agreement. Reductions in frequency are determined as follows: (1) for each party and for each U.S. port within the scope of the agreement served by that party, determine total number of port calls over the most recent twelve (12) month period for which data are available (historical port call calculation); (2) for each party and for each U.S. port within the scope of the agreement served by that party, estimate the total number of port calls for the twelve (12) month period immediately following implementation of the agreement (expected port call calculation); (3) calculate the difference between the "historical port call calculation" and the "expected port call calculation." Provide, for each party and for each U.S. port, the following calculations: the "historical port call calculation"; the "expected port call calculation"; and the difference between those calculations.

Part V(B)(2) requires the filing party to specify any elimination of service to any U.S. port within the scope of the agreement that is currently (at the time the agreement is filed) receiving liner service from any party to the agreement, where the elimination of that port occurs as a result of the implementation of the agreement. The term "service to any U.S. port" includes direct service by the parties and indirect service by way of feeder service.

Part VI(A)

Part VI(A) requires the filing party to indicate whether or not the agreement was entered into as a direct or indirect response to any law, decree, rule, regulation or any other governmental action promulgated or otherwise implemented by a foreign government. The agreement may, for example, operate in a context where a foreign government has promulgated or implemented certain cargo reservation, cargo preference or other cargo sharing schemes that favor national flag lines and that require these national lines to be members of a conference. A *direct* response to such governmental action would be the creation of a conference agreement. An *indirect* response to such governmental action would be the creation of a pool that facilitates cargo sharing within a conference even though the pool was not *per se* required by such governmental action. Moreover, a commercial agreement that is in response to a governmental action that was itself in response to the concerted actions of other governments (for example, the UNCTAD Code of Liner Conduct) would be in direct response to a governmental action and so require the completion of Part VI. In addition, an equal access agreement necessarily entails the involvement of a foreign government in liner shipping, thus requiring the completion of Part VI.

Part VI(B)

Part VI(B) requires the filing party to identify all such laws, decrees, rules, regulations or any other foreign governmental actions that have led to the agreement. All such governmental actions should be identified by the type of governmental action (e.g., a law, decree, memorandum order, etc.), the full legal title of the governmental action, the date that the governmental action became (or will become) effective, and the date (if specified) the governmental action will terminate. Part VI(B) also requires a detailed description of the purpose and the nature of the governmental action, including all requirements imposed on the parties by the governmental action, and the specification of each provision in the agreement that is a direct or indirect response to each such governmental action.

Part VI(C)

Part VI(C) requires the filing party to indicate whether or not any law, decree, rule, regulation or any other foreign governmental action identified in Part II(B) limits access to the carriage of liner cargoes within the scope of the agreement. Limited access to the carriage of liner cargoes may be effected by excluding certain liner operators or classes of liner operators (e.g., by national flag or carrier nationality) from the trade entirely, or by reserving certain cargoes for carriage by certain liner operators or classes of liner operators (e.g., by national flag or carrier nationality), or by limiting the ports at which liner operators may call, or by restricting the frequency of scheduled port calls, or by other such measures that restrict the open competition for liner cargoes within the scope of the agreement by liner operators.

Part VI(D)

Part VI(D) requires the filing party to explain how access to cargoes carried by liner operators is limited by the actions of a foreign government as identified in Part VI(B). See Part VI(C) for examples of how access to cargoes can be limited by the actions of a government.

Part VI(E)

Part VI(E) requires the filing party to provide the percentage of the total amount of cargo carried on all liner vessels in the trade to which access is limited by a foreign government. The percentage is derived by dividing the amount of cargo in the trade to which access is limited by a foreign government, by the total amount of cargo carried on all liner vessels in the trade and multiplying the quotient by 100. The *trade* is defined as the scope of the agreement, that is, all foreign and domestic ports or port ranges served under the agreement. The amount of cargo can be measured in revenue tons, weight tons, measurement tons or TEU's. Specify which unit of measurement is used. The amount of cargo should be provided on the basis of the most recent twelve (12) month period for which data are available. Where precise information is not available, best estimates may be supplied. Identify estimates by the use of the notation "est." Indicate the sources of such estimates.

Part VII

The completion of Part VII (A) and (B) is optional.

Part VII(A)

Part VII(A) permits the filing party to indicate all benefits resulting from the agreement that will accrue principally to the parties as a result of the operation of the agreement. Such benefits may include increased operational efficiencies or other reductions in costs that result from the implementation of the agreement. Data that are necessary to substantiate the specified benefits should be submitted.

Part VII(B)

Part VII(B) permits the filing party to indicate all benefits resulting from the agreement that will accrue to shippers and to U.S. commerce generally. Such benefits may include reduced rate levels or improved quality or frequency of service that result from the operation of the agreement. Data that are necessary to substantiate the specified benefits should be submitted.

Part VIII

Part VIII requires a filing party that has answered "yes" to Part II (A), (B) or (C) to identify any reports, studies or other research that were prepared by or for any or all of the parties for the purpose of analyzing, formulating or assessing the competitive conditions in the relevant trade(s) affected by the agreement or the competitive impact of the agreement on the relevant trade(s) affected by the agreement.

Part IX(A)

Part IX(A) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding the Information Form and any information provided therein.

Part IX(B)

Part IX(B) requires the filing party to provide the name, title, address, telephone number and cable address of a person the Commission may contact regarding a request for additional information or documents.

Part IX(C)

Part IX(C) requires generally that the filing party sign and certify that the information in the Form and all attachments and appendices are, to the best of the filing party's knowledge, true, correct and complete. The filing party is also required to indicate his or

her relationship with the parties to the agreement.

Federal Maritime Commission

Information Form For Certain Agreements By or Among Ocean Common Carriers

Agreement Number———————
(Assigned by FMC)
Part I *Agreement Name:*———————

Part II *Agreement Type*

(A) *Rate-Fixing Agreements*
Does the agreement authorize the parties to collectively fix rates or significantly modify an agreement with such authority?
Yes ☐ No ☐

(B) *Pooling Agreements*
Does the agreement authorize the parties to pool cargoes or revenues or significantly modify an agreement with such authority?
Yes ☐ No ☐

(C) *Joint Service or Consortium Agreements*
Does the agreement authorize a joint service/consortium arrangement or significantly modify an agreement with such authority?
Yes ☐ No ☐

If any question in PART II is answered "YES", complete PARTS III, IV, and VIII (in addition to PARTS I, II, VI, and IX that are required to be completed by all filing parties.)

Part III *Market Share Information*

(A) Provide the total amount of cargo carried on all parties' liner vessels in each relevant trade within the scope of the agreement over the most recent twelve (12) month period for which data are available.

(B) Provide the total amount of cargo carried on all liner vessels in each relevant trade within the scope of the agreement over the most recent twelve (12) month period for which data are available.

(C) Provide the market share of all parties in each relevant trade within the scope of the agreement over the most recent twelve (12) month period for which data are available.

Part IV *Market Competition*

(A) *Liner Competition*

(1) For each relevant trade within the scope of the agreement, provide the names of all liner operators *not* parties to the agreement, currently offering service in that trade.

(2) Provide the names of all liner operators serving alternative liner routings where those operators compete for cargoes carried by the parties in the relevant trade.

(3) Describe the nature and extent of the competition from the liner operators listed in (A)(1) and (A)(2) above.

(B) *Non-Liner Competition*

(1) Indentify all competitive substitute forms of transport, other than liner service, that are available to shippers of commodities historically transported by liner service in each relevant trade (including, for example, bulk carriers, charter operators, or air freight carriers).

(2) Estimate the percentage of the total amount of liner cargoes in each relevant trade, traditionally carried on liner vessels, that has been carried by non-liner substitute forms of transport over the most recent twelve (12) month period for which data are available.

Part V *Service to the Shipping Public Under the Agreement*

(To be completed only for those agreements which have service authority.)

(A) *Proposed Service*
Identify all U.S. ports expected to be served by the parties under this agreement.

(B) *Reduced Sailings*

(1) Estimate the parties' reductions in frequency of calls at each U.S. port within the scope of the agreement.

(2) Specify the parties' elimination of service to any U.S. port within the scope of the agreement currently served by any party.

Part VI *Foreign Government Involvement in the Liner Market*

(A) Was this agreement entered into as a direct or indirect response to any law, decree, rule, regulation, or other governmental action promulgated or implemented by a foreign government?
Yes ☐ No ☐

(B) If the answer to (A) is "YES", identify all such laws, decrees, rules regulations or other governmental actions and specify all provisions in the agreement that stem from these factors.

(C) If the answer to (A) is "YES", do any of the above identified governmental actions limit access to the carriage of liner cargoes within the scope of the agreement?
Yes ☐ No ☐

(D) If the answer to (C) is "YES", explain how access to liner cargoes is limited by the foreign government.

(E) If the answer to (C) is "YES", provide the percentage of the total liner cargo in the trade to which access is limited by a foreign government. Explain the method by which the percentage was derived.

Part VII *Benefits of the Agreement* (Optional)

(A) Indicate any benefits (such as improved efficiencies or other reductions in transportation costs) that will accrue principally to the parties as a result of the operation of the agreement. Provide the data necessary to substantiate the above specified benefits.

(B) Indicate any benefits (such as lower rate levels or improved service levels) that will accrue to shippers and to U.S. commerce generally as a result of the operation of the agreement. Provide the data necessary to substantiate the above specified benefits.

Part VIII *Reports, Studies or Other Research*

Identify any reports, studies or other research that were prepared by or for any or all of the parties for the purpose of analyzing, formulating or assessing the competitive conditions in the relevant trade(s) affected by the agreement, or the competitive impact of the agreement on the relevant trade(s) affected by the agreement.

Part IX *Identification of Person(s) to Contact Regarding the Information Form and Certification of Authenticity*

(A) Identification of Contact Person ———
(1) Name of Contact Person ———
(2) Title of Contact Person———
(3) Firm Name and Business———
(4) Business Telephone Number ———
(5) Cable Address ———

(B) Identification of an Individual Located in the United States Designated for the Limited Purpose of Receiving Notice of an Issuance of a Request for Additional Information or Documents (see 46 CFR 572.606).
(1) Name ———
(2) Title ———
(3) Address ———
(4) Telephone ———
(5) Cable Address ———

(C) Certification
This Information Form, together with any and all appendices and attachments thereto, was prepared and assembled in accordance with instructions issued by the Federal Maritime Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made, the information is, to the best of my knowledge, true, correct, and complete.
Name (please print or type) ———
Title ———
Relationship with parties to agreement ——
Signature ———
Date ———

[FR Doc. 84-29890 Filed 11-14-84; 8:45 am]
BILLING CODE 6730-01-M

46 CFR Parts 538 and 580

[Docket Nos. 84-21, 84-23 and 84-24]

Service Contracts, Loyalty Contracts, and Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This Final Rule implements those provisions of the Shipping Act of 1984 which relate to the areas of (1) service contracts, (2) loyalty contracts, and (3) general tariff filing requirements. It amends and supersedes three previously published Interim Rules in these subject areas and consolidates them into one Final Rule.

EFFECTIVE DATE: December 15, 1984.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Shipping Act of 1984, Pub. L. 98-237, 98 Stat. 67, 46 U.S.C. app. 1701-1720 (the Act or the 1984 Act), was enacted on March 20, 1984 and became effective 90 days later, on June 18, 1984. It significantly alters the statutory scheme which previously governed the oceanborne foreign commerce of the

United States—the Shipping Act, 1916 (46 U.S.C. app. 801 *et seq.*) (the 1916 Act). As a result of these changes, the Commission determined that it would be necessary to promulgate rules to implement several provisions of the Act, including, *inter alia*, those relating to (1) service contracts and time/volume rates, (2) loyalty contracts and (3) general tariff filing requirements.

The Commission initially issued three Interim Rules covering these subjects, pursuant to the authority given it by section 17 of the Act—Docket No. 84–21 (service contracts and time/volume rates); Docket No. 84–23 (loyalty contracts); and Docket No. 84–24 (other foreign tariff regulations). These Interim Rules also requested comments by the public and, as a result, were commented on by many diverse interests. The Commission is now issuing Final Rules in these three proceedings. However, since they all relate to the general area of tariffs and are all to be contained in a new Part 580 of the Code, they are consolidated in this Rule and Part 580 is published in its entirety. The comments to the Interim Rules will nonetheless be considered separately, and, therefore, the remainder of this discussion will be divided as follows:

Part I. Service Contracts and Time/Volume Rates (Sections 580.7 and 580.12) [Docket No. 84–21]

Part II. Loyalty Contracts (Section 580.16) [Docket No. 84–23]

Part III. Foreign Tariff Filing Regulations—General (Sections 580.0 to 580.6; 580.8 to 580.11; 580.13 to 580.15) [Docket No. 84–24]

I. Service Contracts and Time /Volume Rates—Docket No. 84–21 (Sections 580.7 and 580.12)

The Commission initiated Docket No. 84–21 on May 3, 1984, by publishing an Interim Rule (49 FR 18849) to implement certain provisions of the 1984 Act relating to service contracts and time/volume rates. Interested persons were given 90 days to comment on the rule. In addition, the Commission indicated that concerned individuals could file comments prior to the effective date of the Interim Rule (June 18, 1984) if they perceived serious difficulties with it. The Commission subsequently modified the Interim Rule on June 14, 1984, in response to these emergency comments and solicited additional final comments by August 1, 1984 (49 FR 24701).

The Commission received 17 additional final comments on the Interim Rule. Commenting parties or groups of parties are: (1) Port of Oakland; (2) National Maritime Council; (3) Sea-Land Service, Inc.; (4) Tobacco Association of the United States; (5) Matson Navigation Company, Inc.; (6) The Journal of Commerce; (7) Chemical Manufacturers Association (CMA); (8) E.I. du Pont de Nemours and Company (DuPont); (9) United States Department of Transportation (DOT); (10) NPS International; (11) International Association of NVOCCs (IANVOCC); (12) Inter-American Freight Conference; (13) U.S. Atlantic & Gulf/Australia-New Zealand Conference; Iberian/U.S. North Atlantic Westbound Freight Conference; Greece/U.S. Atlantic Rate Agreement; Italy, South France, South Spain, Portugal/U.S. Gulf and the Island of Puerto Rico (Med-Gulf) Conference; Mediterranean-North Pacific Coast Freight Conference; the "8900" Lines; the West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Conference; and Marseilles/North Atlantic U.S.A. Freight Conference (North Atlantic Conferences); (14) Pacific Coast European Conference; Latin America/Pacific Coast Steamship Conference; and Pacific Coast River Plate Brazil Conference (Pacific Coast Conferences); (15) Trans-Pacific Freight Conference of Japan/Korea; Japan/Korea-Atlantic and Gulf Freignt Conference; Trans-Pacific Freight Conference (Hong Kong); New York Freight Bureau; and Philippines North America Conference (Trans-Pacific Conferences); (16) Pacific Westbound Conference; Far East Conference; Pacific Straits Conference; and Pacific Indonesian Conference (Far East Conferences); and, (17) North Atlantic United Kingdom Freight Conference; North Atlantic French Atlantic Freight Conference; North Atlantic Continental Freight Conference; North Atlantic Baltic Freight Conference; Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference; Continental North Atlantic Westbound Freight Conference, North Atlantic Westbound Freight Association; United Kingdom & U.S.A. Gulf Westbound Rate Agreement; Continental—U.S. Gulf Freight Association; Gulf-United Kingdom Conference; Gulf-European Freight Association; North Europe—U.S. South Atlantic Rate Agreement; and U.S. South Atlantic-Europe Rate Agreement (North European Conferences or NEC).

The following is a section-by-section summary of the various comments received and the Commission's disposition of them. Any comment not directly addressed here has nonetheless been fully considered by the Commission. In addition, the Commission has taken this opportunity to make minor editorial changes in the Final Rule for the sake of greater clarity.

Section 580.7(a)—Definitions

Section 580.7(a)(1)—"Contract Party"

Section 580.7(a)(1) of the Interim Rule defines "contract party" as "a party signing a contract as shipper or ocean common carrier" and any "related" entity "who may engage in the shipment of commodities in the trade covered by the contract." The Inter-American Freight Conference believes that only entities who have actually signed a service contract should be considered contract parties, and the North European Conferences suggest that all entities weith any remote interest in the contract or relation to the contract signatories be specifically named in the contract. CMA suggests revisions which would allow less than the entire membership of an organization to enter into a contract.

The Commission has revised the definition of "contract party" originally proposed, in part, to resolve these comments. While the designation of contract parties is not an essential term subject to public disclosure under the Act, the Commission believes that all parties able to take advantage of the contract must be named in the contract itself. This will allow the Commission to determine which shipments by a carrier are covered by a contract and therefore entitled to a contract rate, and which must be charged the tariff rate. Without such disclosure, it would be virtually impossible to enfore the tariff adherence requirements of the Act. Accordingly, the Rule has been revised to require that all persons or entities entitled to receive or authorized to offer the service contract's non-tariff rates be expressly named in the contract as contract parties.

The Commission has also taken this opportunity to amend the definition of "contract party" to take into account the fluctuating membership which may occur in a shippers' association. The revision accomplishes this by considering any member of a shippers' association, regardless of whether it joined or left the association during the course of the contract, to be a contract party without having to be specifically named in the contract.

Section 580.7(a)(2)—"Geographic Area"

Section 580.7(a)(2) of the Interim Rule defines "geographic area" as "the general location from which or to which the contract cargo will move in intermodal service."

The Inter-American Freight Conference and the North Atlantic Conferences contend that the Commission lacks the authority to

require the application of a service contract to any location not actually agreed to by the contract parties, a result which they believe occurs when this definition is applied to the contract filing requirements of § 580.7(b). The North European Conferences argue that only the concise statement of essential terms, and not the service contract itself, is required by statute to include a reference to geographic areas.

The Commission does not believe that anything in these comments requires it to alter its definition of "geographic area." It is taken directly from language contained in the legislative history to the Act. *See* S. Rep. No. 3, 98th Cong., 1st Sess. 31 (1983). The confusion which has arisen over its use in the Interim Rule derives from the fact that though it was only intended to apply to the statement of essential terms, it might also have applied to the contract itself.

Section 580.7(b) requires service contracts filed with the Commission to state, among other things, "the essential terms." Section 580.7(g)(2) requires the essential terms to include ". . . the origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements." Taken together, in conjunction with the definition of "geographic area," these sections could be read to require a broader statement of scope in the service contract than had been actually agreed to by the parties. To clarify this situation, §580.7 is amended in paragraph (b)(3)(ii) to provide that, in the context of the contract filing requirements, the contract need only "reflect the actual locations agreed to by the contract parties."

However, as indicated above, the statement of essential terms must be set forth in terms of geographic areas for through intermodal movements. The description of the geographic area in the statement of essential terms may, within reason, be as broad or as narrow as the parties desire. Depending on the circumstances, "geographic areas" might be stated in terms of countries, regions, states, counties, cities, or zip codes. The propriety of any particular geographic area description contained in an essential terms publication in the initial stages of the implementation of this Final Rule will have to be determined on an *ad hoc* basis. As further experience is gained in this area, section 580.7 may be further amended to reflect the operational realities of this new commercial practice.

Section 580.7(a)(3)—"Port Range"

Comments similar to those discussed above in terms of "geographic area" were also received concerning the definition of "port range". The commenters again assume that the Commission is attempting to impose a broader scope on a service contract than that which may be intended by the contract parties. The amendment to section 580.7(b)(3)(ii), discussed above, should alleviate these concerns, at least with respect to the contract filing requirement. The Commission continues to believe, however, that the statement of essential terms must be in terms of "port ranges" in the case of port-to-port movements and that, in certain instances, this may result in a broader scope than that stated in the contract. This is nonetheless consistent with the Congressional intent referenced above.

Section 580.7(a)(4)—"Service Contract"

DuPont proposes that the definition of "service contract" include a statement that they are contract carriage arrangements and not common carriage. The North European Conferences suggest that the definition allow for a "fixed portion" of a shipper's cargoes and provide antitrust immunity for such arrangements.

The definition of "service contract" in the Interim Rule is taken directly from the Act and will not be modified. In any event DuPont's suggestion would not appear to be legally feasible, because the Act's service contract concept appears to contain elements of common carriage.

NEC's suggestion would, in effect, convert a service contract to a "loyalty contract" as that term is defined by the Act (46 U.S.C. app. 1702(14)). It would be inconsistent with Congress' treatment of loyalty contracts elsewhere in the Act (46 U.S.C. app. 1709(b)(9)) and will not therefore be adopted.

Section 580.7(a)(5)—"Shipper"

The definition of "shipper" is also derived directly from the Act and will be retained. We will, however, accommodate the suggestion of the Inter-American Freight Conference and include a definition of "shippers' association" in the Final Rule for purposes of consistency.

Section 580.7(a)(6)—"Time/Volume Rate"

Section 580.7(a)(6) of the Interim Rule defines a "time/volume rate" as "a freight rate published in a tariff which must vary with the volume of cargo offered or freight revenues received over a specified period of time."

The North European Conferences express concern over use of the words "must vary", which they interpret as meaning that a time/volume rate must vary internally—*i.e.* it must be offered on a sliding scale—and if it merely varies from other tariff rates, only in that it is based on a volume of cargo over time, it is subject to rejection. In addition, noting that the word "freight" is not used in the Act, they state that the Commission has not offered any reason for making a distinction between "freight rates" and "rates." The Inter-American Freight Conference offers an alternative definition for "time/volume rate", and also suggests that it and section 580.7(1), which relates to the use of time/volume rates, be moved to the tariff filing sections of Part 580.

The Commission agrees with this latter point and is redesignating Interim Rule §§ 580.7(a)(6) and 580.7(1) as sections 580.12(a) and 580.12(b), respectively, in the Final Rule. In addition, the Commission believes that the definition proffered by the Inter-American Freight Conference may serve to accommodate NEC's comment and otherwise clarify any ambiguity which may have been inherent in the Interim Rule's definition of "time/volume rate." We are therefore adopting it.

Section 580.7(b)—Contract Filing Requirements

The North European Conferences suggest that the Commission allow the optional filing of service contracts involving exempted commodities referenced in section 8(c) of the Act. While there does not appear to be any legal barrier to allowing the filing of service contracts involving exempted commodities on an optional basis by an individual carrier, conferences' authority to enter into and file such contracts is not as clear. The issue is whether Congress' exemption of certain commodities precludes concerted rate action on those commodities with or without antitrust immunity. That issue will be made the subject of a separate proceeding. At this point, conferences may file service contracts on exempt commodities, at their option. However, this is permitted without prejudice to any subsequent Commission determination of the legality of such practices.

Permitting such contracts to be filed, but then exempting them from the otherwise applicable regulatory requirements could, however, lead to discrimination between similarly situated shippers and allow potential abuse of the filing and publication process. Therefore, although the Commission will permit the optional filing of exempted-commodity contracts, the Final Rule is amended to make it clear that all other regulatory

requirements applicable to non-exempt service contracts will apply to such filings.

As mentioned above in the context of "geographic area" and "port range", § 580.7(b) will also be modified to make clear that the only locations which must be included in the service contract are those actually agreed upon by the contracting parties.

We have also modified the numbering system to be used in the filing of service contracts. These changes will enable the Commission to more properly fulfill its responsibilities under the Act. The Final Rule will require that the filing carrier or conference assign each service contract a unique number bearing the prefix "SC"; and reference the applicable essential terms "publication" and the specific "set" of essential terms (which are to be identified by the prefix "ET") within the identified publication. This was done for two purposes: To permit potential shippers to accurately identify the specific "set" of essential terms in which they may have an interest; and to enable the Commission to distinguish among several contracts with the identical essential terms.

Section 580.7(b)(5) of the Interim Rule requires that carriers and conferences identify, in each service contract, the shipment records which will be maintained to support the contract. The North Atlantic Conferences contend that the maintenance of shipment records for service contracts is inequitable, because the requirement is imposed only on shipments moving under service contracts. We believe the record maintenance requirement is necessary to the effective and efficient administration and enforcement of the service contract system. If the need arises, these records will enable the Commission to ascertain whether a particular contract has been used as a device to rebate or grant other unlawful rates or concessions. This requirement should serve to provide valuable competitive safeguards to both carriers and shippers. In addition, it does not appear to be particularly burdensome to the carriers. The Commission's previous regulations applicable to time/volume contracts contained a similar requirement, which was promulgated to assure that records would be available to verify that the terms of the contract were met. It did not appear to cause any particular difficulties in practice.

If any burden exists with respect to the maintenance of records, it more likely arises from the related requirement that such records be maintained by a U.S. resident agent. This is discussed below in the context of section 580.7(k).

Section 580.7(c)—Confidentiality

The North European Conferences submit that service contract *amendments* should be afforded the same confidential treatment as service contracts and that § 580.7(c) should be amended accordingly. The Commission notes that, to the extent a contract amendment alters an essential term of a service contract, it would not be permitted under paragraph (d)(i) of this section. Amendments to non-consequential terms of a service contract are permissible, and should be filed with the Commission for informational purposes. The Commission will accord such amendments the same confidential treatment which the original contract received. Section 580.7(c) has been revised to make this clear.

Section 580.7(d)—Contract Amendments

Section 580.7(d) states that amendments to service contracts will be treated as new contracts for the purposes of the filing and publication requirements. In addition, this section provides that no new contract may retroactively modify the terms or effects of a previously filed contract.

DuPont and CMA propose that only amendments to the essential terms of a service contract be considered new contracts. They further suggest that the reference to "publication" requirements should be changed to "availability requirements" to avoid any confusion with general tariff concepts and to more closely track the language of the Act. In addition, CMA proposes a change to clarify that contract amendments do not terminate the original contract.

The North European Conferences express difficulty in understanding the basis for § 580.7(d), which they believe serves to restrict service contract amendments. They nonetheless offer changes in the wording of the section to ameliorate what they perceive to be detrimental consequences of the Interim Rule.

In light of these comments, the Commission has made several changes in § 580.7(d) of the Interim Rule. In the first place, the Commission agrees that the only modifications to a service contract which should be of any concern are those which modify an essential term of the contract. Modifications to non-essential terms are of little consequence but should nonetheless be filed with the Commission for informational purposes. The Commission does not believe, however, that modifications to essential terms of a service contract should be permitted during the duration of the contract, because they could potentially affect the rights of other similarly situated shippers. For instance, if a shipper was unable to meet its cargo volume commitment under a contract and the parties agreed to lower that amount during the term of the contract, this could discriminate against another shipper who was not able to take advantage of the contract during its initial 30-day offering, because of the volume of cargo originally required to be committed but who could have done so under the lower minimum. Also, the contract parties could agree to alter the geographic areas or port ranges covered by the contract thereby including similarly situated shippers who were not included under the original contract. These situations could be exacerbated if the non-contract shipper had already shipped all or a substantial portion of its cargo prior to the time of the modifictions and is, therefore, no longer able to take advantage of the altered terms. The Commission has concluded that the best approach to avoid such situations is to prohibit any modification to an essential term during the term of the contract.

The parties remain free, however, to mutually agree to terminate the contract at any time during its term. If they take such action, and the minimum quantity has not been met, the cargo previously carried under the contract must be rerated according to the otherwise applicable tariff rates in effect at the time of the shipments (unless the contract provides a different procedure). This procedure would be similar to the carrier's or conference's basic measure of damages if the shipper did not meet the quantity term of the contract and there was no mutually agreed termination. Section 580.7(d)(iii) further recognizes, however, that the contracting parties may, pursuant to § 580.7(g)(2)(vii), set forth in their initial contract specific terms to govern situations in which the "volume requirement" may not be met.

Section 580.7(e)—Transmittal of Service Contracts

DuPont suggests that the Interim Rule be amended to allow carriers and conferences to annotate the inner envelope (containing the service contract) for the purpose of identifying the number assigned to the corresponding statement of essential terms. This would allegedly obviate the need to compare the contract with the filed essential terms.

While the Commission has made certain amendments in this provision, it did so in order to clarify and streamline

the administrative processing of service contracts and related statements of essential terms. However, contracts must still be compared with filed essential terms to ensure that the statement of essential terms contains a *concise* statement of all of the essential terms of the contract(s). The Commission cannot rely on representations on an envelope to meet its statutory responsibilities.

The Final Rule will protect the contents of each envelope containing a service contract by limiting the amount of information on such envelope to the statement "This Envelope Contains a Confidential Service Contract." The Commission cannot maintain the confidentiality of any contract transmitted by any other procedure. If a filing party fails to utilize the specific procedures contained in this section, the confidentiality of the contract could inadvertently be compromised.

Section 580.7(f)—Return of Contracts

Section 580.7(f) of the Interim Rule permits the Commission to return a service contract if its provisions are not substantiated by reference to its statement of essential terms. In addition, § 580.7(j) of the Interim Rule allows the rejection of a statement of essential terms which fails to conform to any of the requirements of the Rule.

As an initial matter, the North European Conferences question the Commission's authority to return or reject service contract filings, lacking express statutory authority to do so. We believe that a carefully circumscribed return and rejection procedure falls within the ambit of the Act's rulemaking authority in section 17, because such procedures are necessary for the enforcement and implementation of section 8(c) of the Act. Without such a procedure, contracts or statements of essential terms which are contrary to the Act or the Commission's regulations could remain in effect for a considerable period of time before being challenged. This would not only subvert the purposes of the service contract provision, but would also substantially affect the rights of similarly situated shippers.

The Commission has determined, however, to treat its return and rejection procedures in one section for purposes of clarity and uniformity. Within 15 days of filing, the Commission can return a contract or statement of essential terms which does not conform to the requirements of paragraph (b) or (g) of § 580.7. When it does so, the Commission will provide a written explanation of its reasons. Parties then have 15 days to refile the document and the Commission can then reject it if it continues to fail to conform. This procedure should satisfy various concerns raised by CMA, the Journal of Commerce, National Maritime Council, North European Conferences, Trans-Pacific Conferences and Pacific Coast Conferences.

We have not adopted the recommendation of CMA that the contract rate should apply to shipments made prior to return or rejection, regardless of whether the contract or statement of essential terms is "cured" and refiled. The otherwise applicable tariff rate must be charged in such situations where rejected terms or returned contracts are not cured and refiled. Any other procedure would unduly favor contract parties who fail to adhere to the requirements of the Act to the disadvantage of competing carriers and shippers and would operate to the detriment of similarly situated shippers not fortunate enough to be the first shipper signatory of a contract.

The Commission will exercise its return and rejection procedure only during a limited 15-day review period. Moreover, this procedure will apply in situations involving significant deficiencies in contract and essential terms provisions, as suggested by the Inter-American Freight Conference.

Section 580.7(g)—Publication of Essential Terms

Section 580.7(g)(1)

Section 580.7(g)(1) of the Interim Rule requires that the essential terms of all service contracts be filed with the Commission and be made available to the general public in tariff format. In addition, this provision requires that the essential terms be made available to all shippers or shippers' associations which are similarly situated under the same terms and conditions for no less than 30 days from the date of filing.

The Inter-American Freight Conference proposes that the phrase "schedule of essential terms" be substituted for "publication of essential terms", and that the heading of § 580.7(g) be changed to "Essential Terms". It also suggests that the first sentence of § 580.7(g)(1) (which requires the essential terms to be filed with the Commission) be deleted, because § 580.7(h) requires a summary of essential terms to be filed with the Commission and is allegedly more in keeping with the Act's requirement that "a concise statement of essential terms shall be filed with the Commission."

Du Pont would add the words "A concise statement of" at the beginning of § 580.7(g)(1). This suggested change is intended to reflect the statutory language quoted above and to distinguish between the "concise statement of essential terms", which is available to the general public, and the "essential terms" themselves, which are to be made available to all similarly situated shippers. To the extent possible, these suggestions are incorporated in the Final Rule.

The North European Conferences propose that the essential terms publication requirement of § 580.7(g) be revised to provide carriers or conferences with the option of filing a copy of the underlying service contract, minus the name of the shipper, in lieu of a concise statement of its essential terms. NEC further submits that, if such an option is exercised, there would be no reason to reject an essential terms' filing on the grounds that it did not include a term "essential" to the contract.

The Commission is not adopting this proposal. First, section 8(c) of the Act clearly requires that "each contract shall be filed with the Commission" and "*at the same time* a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format". (Emphasis added). This contemplates that initially two distinct documents are to be submitted to the Commission *simultaneously*—one, a contract, and the other, a summary of the contract's essential terms in tariff format. In addition, as explained above in the discussion of geographic areas and port ranges, the concise statement of essential terms may, in certain instances, be geographically broader than the locations stated in the contract. Lastly, a brief summary of essential terms will be easier for prospective shippers to review and will facilitate the administration of the service contract system generally and the possible future computerization of such data. To the extent that a service contract meets all the essential terms' format requirements and is appropriately stated in terms of geographic areas or port ranges, it could be submitted, minus the shipper's name, in lieu of a statement of essential terms.

The Trans-Pacific Conferences oppose § 580.7(g)(1) which requires a carrier or conference entering into a service contract to execute a similar contract, under the same essential terms, with any and all similarly situated shippers and shippers' associations which approach the carrier or conference within the first 30 days after the essential terms are filed. They contend that such a requirement is contrary to the Act and impractical under normal

operating conditions. They read section 8(c) of the Act as mandating merely that the statement of essential terms must be made available to the general public and that a copy of those terms must be made separately available to any shipper similarly situated who specifically requests it. They do not believe, however, that they are *required* to accord those identical essential terms to other shippers.

The Commission rejects the contention that a carrier or conference which enters into a service contract has only to provide a copy of its essential terms to any similarly situated shipper who requests it. There is nothing in our review of the Act or its legislative history which supports this position. Section 8(c) makes it clear that carriers must make a concise statement of essential terms available to the general public, but that "*those essential terms shall be available to all shippers similarly situated.*" This latter requirement means more than providing similarly situated shippers with an opportunity to view a copy of the essential terms. If it meant only that, it would be redundant, given the preceding requirement that a concise statement of essential terms be made available "to the general public."

The House Merchant Marine and Fisheries Committee put the publication requirement for essential terms in its proper context when it noted:

> It is hoped that the requirement that a service contract's essential terms be filed publicly so that those terms are available to all other shippers who may wish to use them, will preserve an important element of the common-carriage concept that the bill is based on.
>
> H.R. Rep. No. 53, 98th Cong., 1st Sess. 17 (1983).

The Commission believes that section 8(c) requires a carrier which enters into a service contract to enter into similar contracts with other similarly situated shippers if they desire the same essential terms. This requires, of course, the exercise of sound business judgment on the part of the carrier. However, if a carrier chooses to induce business by means of a service contract, it should be prepared to offer the same essential terms to other similarly situated shippers.

The Commission will not attempt here to establish the limits of a carrier's or conference's obligations under a service contract. Nor will it attempt to define what constitutes a similarly situated shipper. These are matters which are more appropriately resolved on a case-by-case basis.

Section 580.7(g)(2)(iv)—Contract Rates

Section 580.7(g)(2)(iv) requires the statement of essential terms to include "the contract rate, rates or rate schedule, including any additional or other charges (viz. surcharges, terminal handling charges, etc.) that apply."

CMA objects to this provision on the ground that it is an unwarranted expansion of the statutory term "line-haul rate," which it believes is all that need be included. Whatever the definition of "line-haul rate" may be (and it is not defined in the statute), it is clear from the legislative history that this essential term was meant to encompass "all compensation to be paid" under a service contract. S. Rep. No. 3, 98th Cong., 1st Sess. 31, 32 (1983). The Commission's refinement of the term "line-haul rate" is thus fully supported and, moreover, should serve to provide all shippers the requisite information they will need in order to make an informed and intelligent decision concerning a service contract.

The Commission has modified § 580.7(g)(2)(iv) to incorporate Sea-Land's suggestion that conditions and terms of service or operation or concessions which in any way affect such rate or charge be disclosed. In addition, we have adopted Matson's suggestion that retroactive price adjustments based on experienced costs be allowed, if the method of determining such adjustments is disclosed in advance in the service contract and the statement of essential terms.

Section 580.7(g)(2)(v)—Term of Contract

Section 580.7(g)(2)(v) of the Interim Rule requires the statement of essential terms to include "the effective date, period, and expiration date of the contract." The North European Conferences contend that the essential terms' publication need only disclose the "term of the contract." The Commission has accepted this suggestion.

Section 580.7(g)(2)(viii)—Deviation

Section 580.7(g)(2)(viii) of the Interim Rule requires a clear description in the statement of essential terms of any circumstances which will permit deviations from the contract terms. CMA views this provision as an unwarranted expansion of the essential terms which are specified in the Act and suggests that it be deleted. The North European Conferences object to subsection (viii)(D) which permits "other deviations from the terms of the contract." NEC contends that the phrase "other deviations" is too vague, that the word "deviations" is incorrectly employed, and that such a catch-all provision is unnecessary to carry out the Act.

Admittedly, section 8(c) of the Act does not expressly include a deviation provision in its list of seven "essential terms." However, the Commission does not consider its deviation provision, § 580.7(g)(2)(viii), to be an "essential term" separate and apart from those set forth in the statute. Rather it relates back to those essential terms and states that if they are subject to change for any reason, that fact should be made apparent. Any contractual provision which can alter an essential term based on future events is a necessary part of the essential term which it affects. Any other interpretation would undermine the purpose for essential terms publication and frustrate the requirement that such terms be made available to "similarly situated shippers." The Commission will therefore continue to require the statement of essential terms to include any deviations that may affect those terms.

Moreover, we do not believe that the term "other deviations" is vague or uncertain. A similar provision was included in the Commission's earlier time/volume rule and apparently engendered no confusion or difficulty. It is intended to be a catch-all provision so that the contracting parties have the maximum amount of flexibility to meet their commercial needs.

Section 580.7(h)—Form and Filing of Essential Terms

The Journal of Commerce suggests that carriers and conferences be allowed to publish essential terms' publications for both export and import trades. It believes that such a procedure would make it easier for the public and interested persons to determine applicable rates. The Journal of Commerce notes that it provides a computerized tariff watching service which would be better served by separate essential terms publications. We will not adopt its suggestion. It is the Commission's intent that a carrier or conference have only one publication containing its essential terms. However, this publication may be divided by trade areas or any other way the carriers or conferences see fit. Requiring statements of essential terms to be included in one publication reduces the number of essential terms' publications and minimizes the scope of any inquiry to ascertain whether a carrier or conference has any essential terms in which a shipping party might be interested.

Section 580.7(h)(3) requires all essential terms' filings to be "printed on yellow paper using black ink." The North European Conferences would amend this provision to provide that the essential terms' publication be legibly printed in black, without using yellow paper. The yellow paper requirement was designed to facilitate mail sorting of essential terms' publications and thus permit their prompt review. The experience gained in the last 90 days has reinforced our belief that the requirement is workable and useful. It is, therefore, retained. The Commission is, however, incorporating the suggestion of NEC concerning clarification of the printing "in black" rather than "using black ink." This will permit the filing of documents printed other than with black ink (*e.g.*, photocopies).

Section 580.7(h)(5) is amended, as suggested by NEC, to require cross-references only in the general commodity tariff that applies in the particular area covered by the essential terms. In so doing, we reject CMA's suggestion that the requirement for cross-referencing be repealed altogether. Tariff cross-references are necessary for users of tariffs to identify all possible applicable rates.

The Commission is also adding a requirement that the essential terms of a service contract or contracts be identified by an essential terms' number in the governing essential terms publication, rather than a service contract number. Because it is anticipated that numerous contracts may be executed under the same essential terms, it is necessary to differentiate and identify which contracts correspond to the appropriate essential terms. *See also*, our discussion above on § 580.7(b).

Section 580.7(i)—Transmittals of Essential Terms Publications

Section 580.7(i) sets forth procedures for the transmittal of concise statements of essential terms. It is silent, however, on the timing of such filings vis-a-vis the filing of service contracts. The Journal of Commerce suggests the contemporaneous transmittal of a service contract with its statement of essential terms. This approach is consistent with the statutory language that a concise statement of essential terms be filed with the Commission "at the same time" a service contract is filed with the Commission. The Commission is amending section 580.7(i) accordingly.

Section 580.7(k)—Resident Agent

Section 580.7(k) of the Interim Rule requires every common carrier and conference to designate a United States resident representative to maintain contract shipment records for a period of five years from completion of each contract. The North Atlantic Conferences and the Trans-Pacific Conferences oppose this provision, on the grounds that it is burdensome, will result in duplication and increased costs, is not directly supported by the Act, and may conflict with foreign non-disclosure statutes. The Trans-Pacific Conferences also contend that the Commission already possesses sufficient means to ensure that service contracts comport with the Act and that users of service contracts should not be burdened with requirements not applicable to others. They also note that the Commission previously rejected a proposal to require the maintenance of all self-pricing records in the United States. Lastly, the North Atlantic Conferences recommend that, because of the impact of a U.S. recordkeeping requirement on inbound conferences, which mainly conduct their shipping transactions abroad, the Commission should, if a recordkeeping requirement is retained, permit inbound conferences to designate a representative abroad.

The Commission has determined to delete the U.S. recordkeeping requirement. Experience gained under our prior time/volume contract rules, which contained a similar provision, does not reveal a compelling necessity for this requirement, at least at this time. Its primary purpose was to aid the Commission in its enforcement efforts. However, the Commission should be able to obtain such records through normal processes, if needed, on a case-by-case basis. If the Commission encounters any difficulties in obtaining such information, it will consider reimposing the U.S. recordkeeping requirement.

Carriers and conferences must, of course, retain whatever records they deem sufficient to support their contractual arrangements (so identified pursuant to § 580.7(b)(3)(vi) of this Rule) and should do so for at least the five-year statute of limitations period contained in section 13(f)(2) of the Act. However, such records need not be maintained in the United States. Section 580.7(j) of the Final Rule reflects this requirement.

Section 580.7(l)—Time/Volume Rates

As mentioned above, this section and the definition of "time/volume rate" in § 580.7(a)(6) will be redesignated §§ 580.12(b) and 580.12(a), respectively.

Two commenters object to the advance enrollment requirement whereby a shipper utilizing a time/volume rate must notify the offering carrier prior to tendering any shipments. The Pacific Coast Conferences believe that such a requirement might preclude multiple-level time/volume rates which automatically apply a second tier, lower rate once a given volume has been achieved. The North European Conferences contend that the word "enrollment" implies that there is only one acceptable method of administering a time/volume rate offering. They further contend that adequate notice of shipper participation could be provided by means other than "enrollment."

We do not believe that a notice requirement for a shipper intending to utilize a time/volume rate is either unwarranted or impractical. It is difficult to conceive how carriers will know when to apply the lower rate unless informed by the shipper that it intends to use it. The Commission further believes that even with such a requirement, multiple-level time/volume rates are still feasible, assuming some initial notification is provided. The Commission did not intend the word "enrollment" to serve as a limitation on the methods by which a shipper can notify a carrier of its intention to use a time/volume rate. It is therefore amending § 580.7(l) (now § 580.12(b)(3)) to eliminate any confusion which may exist.

The Northern European Conferences also object to the requirement that time/volume rates "remain in effect without amendment for the term specified." They view this requirement as inconsistent with the tariff provisions of the Act and the Commission's tariff filing rules. They concede, however, that it would be inappropriate to allow a time/volume tariff filing to be amended to reduce or terminate the term, if it is being used by at least one shipper.

It was not our intention to require a time/volume rate offering to remain in effect in a tariff for the full term if such an offering has not been accepted by a single shipper. However, the Commission continues to believe that once a shipper gives notice that it is tendering cargo under a time/volume rate offering, the terms of that offering may not be amended during the term specified.

CMA proposes that the record of a shipper's notice of its intention to use a time/volume rate should be maintained for at least one year after the shipper has ceased to use the rate. We find this suggestion to have merit and to impose a minimal burden on the carriers. However, in order to be consistent with the retention requirements for service contracts and the relevant statute of

limitations (46 U.S.C. app. 1712(f)(2)), the Commission is going to impose a five-year shipper-notice retention requirement and additionally require that shipment records supporting the time/volume rate be maintained for this period of time.

Lastly, the Trans-Pacific Conferences propose that records supporting a time/volume rate be identified in a manner similar to that by which the shipment records regarding service contracts must be identified pursuant to section 580.7(b)(5) of the Interim Rule, *i.e.*, that the parties identify which shipment records will be used to support the contract. They believe that such a requirement will ensure accountability and aid the Commission in its enforcement efforts.

There is merit to placing a similar record identification requirement on both service contracts and time/volume rates. The Commission has, therefore, decided to amend its time/volume rate provision to require the identification of the shipment records which will be maintained to support application of a time/volume rate. Such an identification can easily be made in the context of the time/volume rate offering in the carrier or conference tariff and should impose little burden on shippers or carriers.

General Comments

A. Thirty Day Notice

In the preamble to the Interim Rule, the Commission suggested the possibility of requiring a 30-day advance notice requirement for the implementation of service contracts as an alternative to return or rejection of defective filings after their effective date. The ten parties that filed comments on this issue were divided as to which method was less disruptive of commercial arrangements and whether the Commission was authorized by law to implement such proposals.

Neither the 30-day notice procedure nor the rejection procedure is based upon an express statutory provision. Either would have to rely upon the general rulemaking authority of section 17 of the Act on the basis that such procedures are necessary to enforce the requirements of section 8(c). One other alternative is to abandon both and rely upon the reactive enforcement methods of sections 11 and 13 of the Act. Given these alternatives, the Commission has determined that a carefully circumscribed return and rejection procedure is the best method of ensuring that service contract filings will meet the requirements of the Act with minimal commercial disruption.

B. Minimum Quantity Guidelines

The Tobacco Association recommends that the Commission establish guidelines on minimum quantities eligible for contract rates to prevent unreasonable preference being given to any one industry. The Commission rejects this suggestion. First, the Commission does not possess the empirical economic data, at this time, upon which it could promulgate such guidelines. More importantly, such action would appear contrary to the fundamental Congressional policy underlying the Act that commercial interests be given maximum flexibility in arriving at their business arrangements. Cases of discrimination can be dealt with on an *ad hoc* basis. Any shipper who believes it has been unlawfully disadvantaged has remedies under the Act and may file a complaint with the Commission.

C. Time/Volume Contracts

Under the 1916 Act, the Commission had permitted the use of time/volume contracts by common carriers by water and had issued regulations governing their use (46 CFR 536.7). The May 3, 1984 Interim Rule continued to permit the use of time/volume contracts by "common carriers" and separately permitted the use of service contracts by "ocean common carriers." This position engendered much opposition from those filing emergency comments on that Rule, prior to its June 18, effective date. In response to these comments, the Commission revised the Interim Rule on June 14, 1984 to *inter alia*, treat time/volume contracts as a form of service contract. No separate provision was made concerning the use of time/volume contracts. The net result of this action is that non-vessel-operating common carriers (NVOCC' s or NVO's), which do not meet the definition of "ocean common carrier", are no longer able to offer time/volume rates on a contractual basis. They can, however, continue to offer time/volume rates in their tariffs pursuant to the June 14, 1984 Interim Rule and section 8(b) of the Act.

Several commenters support this position, contending that service contracts are the only type of volume contracting authorized by the Act and that time/volume contracts have been subsumed within the concept of service contract because they implicitly, if not explicitly, include a carrier service commitment to carry at least the minimum volume within the contract period. One commenter also notes that NVO's by definition, do not operate any vessels and, therefore, are in no position to offer any meaningful service commitment as a *quid pro quo* for a volume commitment.

IANVOCC and NPS International, an NVOCC, challenge the Commission's treatment of time/volume contracts. NPS argues that the Commission erred in equating time/volume contracts with service contracts, because the former do not contain any service commitments while the latter do. It submits that nothing in the Act requires the Commission to eliminate NVO time/volume contracting and points to the absence of any useful legislative history on this issue. NPS concedes that ultimately this is a policy issue and not a legal one, but contends that policy considerations support continued time/volume contracting by NVO's. This commenter concludes that the Commission should republish its time/volume regulations previously in effect under the 1916 Act and make them applicable to both ocean common carriers and NVO's. Alternatively, NPS suggests that the Commission could limit the use of time/volume contracts to NVO's. The IANVOCC essentially reiterates NPS' comments.

As noted above, the Commission's May 3 Interim Rule treated service contracts and time/volume contracts as separate and distinct forms of volume contracting but attempted to apply similar regulatory treatment to them. The Commission's June 14 amendment altered this position by treating time/volume contracts as a form of service contract and thereby deleted any reference to time/volume contracts in the Rule. This decision was not made with the purpose of denying to NVO's the ability to offer time/volume contract arrangements. Rather, it was arrived at because the Commission became convinced that what was previously known as a time/volume contract was nothing more than a type of service contract. This decision was further influenced by its conclusion that Congress has only authorized service contracts and time/volume rates under the 1984 Act.

Section 8(b) of the Act, titled "Time-Volume Rates," permits rates in tariffs to vary with the volume of cargo offered over a specified period of time. Section 8(c), titled "Service Contracts," allows ocean common carriers and conferences to enter into service contracts with shippers or shippers' associations. Nothing else in the Act expressly authorizes any other volume arrangements.[1] Nor is there any

[1] The Commission's May 3 Interim Rule relied on the definition of "loyalty contract" (section 3(14)) as

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discussion in the legislative history of the Act which specifically mentions time/volume contracts or would support the concept of time/volume contracts as separate and distinct from service contracts. Thus, a reading of the statute and its legislative history indicates that Congress contemplated but two types of volume arrangements—time/volume rates, which are set forth in tariffs and are not based upon any contractual arrangement between the shipper and carrier, and service contracts, which are not filed in tariffs, and are based on reciprocal commitments by both the carrier and the shipper.

This position is supported by the language of other provisions of the Act. For instance, a shippers' association is defined in section 3(24) as "a group of shippers' that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other *volume rates* or *service contracts*". (Emphasis added). If Congress had intended that time/volume contracts be offered as a separate category of volume contracting, it would surely have provided shippers' associations the opportunity to avail themselves of such arrangements. However, under the definition, as written, shippers' associations would be precluded from entering into time/volume contracts.

Sections 10(b)(1) through 10(b)(4) require common carriers to adhere to the rates and charges in their "tariffs" and "service contracts." [2] Time/volume contracts are not separately identified or treated. As a result, if time/volume contracts were allowed as a separate form of volume contracting, it is possible that they would not be subject to these constraints, which go to the essence of a common carrier's obligations to the public.

Moreover, section 109(b)(6) prohibits any common carrier from engaging in any unfair or unjustly discriminatory practice in the matter of rates, cargo classifications, and cargo space accomodations. Likewise, section 10(b)(11) prohibits any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever. What is notable about both of these provisions is that they contain an express exception for *service contracts*. This reflects a Congressional recognition that service contracts would perforce favor some shippers, and might discriminate as to rates or cargo classification, or provide distinct preferences or advantages. *See* H.R. Rep. No. 600, 98th Cong., 2d Sess. 40 (1984). A similar exception was not made for time/volume contracts, which are just as inherently discriminatory. This leads us to conclude that Congress did not contemplate the separate availability of time/volume contracts under that name. Even assuming it did, however, it is clear that such contracts would soon run afoul of these proscriptions.

It has been argued that the reason a time/volume contract is different from a service contract is that the former contains no service commitment while the latter does. The Commission cannot accept this contention and moreover believes that its interpretation may explain Congress' silence on the matter of time/volume contracts—it also considered them subsumed within the definition of a service contract.

Under the Commission's prior time/volume rule, a time/volume rate was defined as "[a] rate conditioned upon the shipment of a specific or minimum quantity of cargo over a set period of time, implementation of which is accomplished pursuant to the terms of a time/volume contract * * *." 46 CFR 536.2(p). However, any such contract had to provide, either explicitly or implicitly, basic service commitments on the carrier's part. The carrier had to provide the space necessary to meet the shipper's volume commitment and had to continue to operate in the trade for the duration of the contract. If a carrier failed to meet these obligations, the shipper would have a remedy at law for breach of contract. Time/volume contracts as previously recognized by the Commission thus fit into the definition of service contract contained in the 1984 Act. Whether explicitly or implicitly stated, it is clear that there were definite carrier service commitments under a time/volume contract. There is no meaningful difference between a service contract and a time/volume contract; the latter is simply a sub-category of the former.[3]

Any contrary conclusion would be inconsistent with Congress' treatment of independent action and its relation to service contracts. Congress gave conferences the authority to limit or prohibit the use of service contracts and also exempted such contracts from the mandatory right of independent action, since they were not required to be filed in tariffs. All conference agreements, however, had to provide their members independent action on any rate or service item required to be filed in a tariff, on not more than 10 days' notice. It the Commission were to permit all common carriers to offer time/volume contracts in lieu of or in competition with service contracts, the situation could arise where carriers, through the use of time/volume contracts (to which independent action would apply) could do indirectly what Congress has not authorized them to do directly.

The Commission is not unmindful of the concerns raised by NPS and IANVOCC. However, the Commission is constrained by the Act and is in no position to provide solely for NVO's something Congress saw fit to deny them. In any event, NVO's still have the option of offering time/volume rates, governed by the provisions of this Rule. Lastly, the Commission notes that even if time/volume contracts were permitted, it is likely that NVO's would have difficultly offering them, given their implicit service commitments and the fact that NVO's have, by definition, no meaningful service to commit and no control over the underlying carrier's schedules, capacity, or services in a particular trade.

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an indication that Congress recognized the concept of a time/volume contract. In view of the other statutory provisions discussed below, the Commission no longer draws this inference. It is important to note, however, that section 3(14) is the only reference in the statute or its legislative history to time/volume "contracts." That reference in section 3(14) to a "contract based upon time-volume rates" may be to nothing more than the arrangement which arises from a time/volume rate offering in a tariff. In any event, whatever Congress may have meant by a "contract based upon time-volume rates," it was doing so in the context of contracts offered by *ocean common carriers* and not NVO's.

[2] Section 10(b) states in pertinent part:

No common carrier, either alone or in conjunction with any other person, directly or indirectly; may—

(1) charge, demand, collect or receive greater, less, or different compensation for the transportation of property or for any service in connection therewith than the rates and charges that are shown in its *tariffs* or *service contracts;*

(2) rebate, refund or remit in any manner, or by any device, any portion of its rates except in accordance with its *tariffs* or *service contracts;*

(3) extend or deny to any person any privilege, concession, equipment, or facility except in accordance with its *tariffs* or *service contracts;*

(4) allow any person to obtain transportation for property at less than the rates or charges established by the carrier in its *tariff* or *service contract* by means of false billing, false classification, false weighing, false measurement, or by any other unjust or unfair device or means. (Emphasis added).

[3] While NVO's may have offered time/volume contracts under the Commission's previous rule, they had no actual service to commit since they do not actually operate vessels as ocean common carriers. However, that earlier rule had coupled the concept of time/volume rate with time/volume contract—a carrier could not offer one without entering into the other. Even though they had no service to commit, NVO's were forced by circumstances to enter into time/volume contracts with shippers. The 1984 Act expressly rectifies this anomaly by permitting time/volume rates by any common carrier (including NVO's) but restricting service contracts to ocean common carriers who have the requisite service.

II. Loyalty Contracts—Docket No. 84–23 (Section 580.16)

On May 17, 1984, the Commission published an Interim Rule (49 FR 20817) in Docket No. 84–23 governing loyalty contracts (or dual rate contracts, as they were referred to under 1916 Act regulation (46 CFR Part 538)). The purpose of the Interim Rule was to implement section 10(b)(9) of the 1984 Act (46 U.S.C. app. 1709(b)(9)) which states that:

> (b) No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—
>
> * * * * *
>
> (9) Use a loyalty contract, except in conformity with the antitrust laws;[4]

The Interim Rule deleted the Commission's regulations governing "dual rate contracts" in 46 CFR Part 538 and added a new provision to the Commission's tariff filing regulations in 46 CFR Part 536 (now 46 CFR Part 580) reading as follows:

§ 536.16 Loyalty Contracts

(a) A sample of any loyalty contract, as defined in this part, must be filed in the applicable tariff together with rules which set forth the scope and application of the contract system.

(b) Every sample loyalty contract and applicable rule filed for inclusion in a tariff under paragraph (a) of this section shall make specific reference to a Business Review Letter, issued pursuant to 28 CFR § 50.6, indicating no objection to the use of that contract. A copy of the Business Review Letter shall be simultaneously furnished to the Commission's Director, Bureau of Tariffs. Failure to comply with these requirements will result in the rejection of the contract and the applicable rules pursuant to § 536.10(d).

(c) The use of any loyalty contract in effect prior to June 18, 1984 shall be prohibited after September 18, 1984 unless supported by a Business Review Letter issued pursuant to 28 CFR 50.6. Such Business Review Letter shall be furnished to the Director, Bureau of Tariffs.

The Interim Rule became effective on June 18, 1984 and interested persons were provided 60 days to comment on the Rule. Prior to the Interim Rule's effective date, "emergency" comments were received from Admiral R.A. Ratti, Chemical Manufacturers Association, and Trans-Pacific Freight Conference of Japan/Korea and Japan/Korea-Atlantic and Gulf Freight Conference (TPFCJ/K). The Commission published a response to the "emergency" comments on June 14, 1984 (49 FR 24696), in which it restated its earler interpretation of the Act as it applied to loyalty contracts and affirmed the Interim Rule.

Ten additional comments were filed between the effective date of the Interim Rule and the close of the comment period. The Council of European & Japanese National Shipowner's Associations (CENSA), the National Maritime Council (NMC), TPFCJ/K and the Gulf Freight Conference, and U.S. Atlantic & Gulf/Australia New Zealand Conference, et al. (USA&G/A–NZ) generally oppose the Interim Rule. Sea-Land Service, Inc. favors the Rule with some modifications. The Department of Justice (DOJ), the Department of Transportation, and Corning Glass Works generally support the Rule as written, and the Tobacco Association of United States favors elimination of all loyalty contracts.[5]

USA&G/A–NZ, TPFCJ/K and CENSA argue that the Commission, as the agency charged with enforcement of the 1984 Act, is responsible for enforcing section 10(b)(9). They believe that the Commission's reliance on a Business Review Letter (BRL) improperly delegates enforcement of section 10(b)(9) to DOJ. These parties further submit that the Commission has the necessary expertise to deal with the antitrust issues which will arise under section 10(b)(9).

USA&G/A–NZ, TPFCJ/K and CENSA point out that a BRL only states DOJ's current enforcement intentions and does not determine whether the proposed activity is contrary to the antitrust laws. Accordingly, they argue that, by relying on the BRL, the Commission is applying the wrong standard to determine whether carriers and conferences are in compliance with section 10(b)(9).

CENSA further contends that carriers and conferences do not have the burden of proving that they fall within the exception to section 10(b)(9). Accordingly, it believes that the Commission cannot even require carriers and conferences to obtain BRL's before entering into loyalty contracts with shippers.

CENSA and TPFCJ/K also submit that the Commission has no summary tariff rejection authority for substantive violations of the 1984 Act, including a violation of section 10(b)(9). They argue therefore that a loyalty contract may only be rejected after notice and opportunity for hearing. USA&G/A–NZ, TPFCJ/K and CENSA interpret the Interim Rule as providing no appeal from denial of a BRL and no opportunity for hearing under the procedure contemplated by the Interim Rule. Sea-Land concurs with these observations and suggests that carriers and conferences be permitted to either file a BRL or prove in a hearing that no antitrust violation exists by use of a particular loyalty contract.

In supporting the Interim Rule, DOJ argues that the Rule fully comports with the 1984 Act, properly reflects applicable antitrust law, and that its promulgation met all appropriate statutory procedures. With respect to the prospect of its issuance of the BRL's contemplated by the Rule, DOJ advises that:

> Such a favorable business review will be likely where the Department is presented with a unilateral loyalty contract involving but a single carrier that does not possess significant market power. A favorable business review letter will not be issued, however, for existing and future loyalty contracts of conferences or groups of competitors, because the Department of Justice does not intend to issue business review letters supporting collective loyalty contracts. [Footnote omitted]

All conference loyalty contracts in existence on June 18, 1984, have now been cancelled. This effectively renders moot that portion of the Interim Rule dealing with contracts "in effect" prior to that date (paragraph (c) of the Interim Rule).[6] Thus, it is appropriate for the Commission to now focus on those portions of the Interim Rule that apply to *new* loyalty contracts, that is, contracts filed after June 18, 1984 (paragraphs (a) and (b) of the Interim Rule).

The regulatory scheme pertaining to loyalty contracts filed after June 18, 1984 differs in some respects from that applicable to loyalty contracts existing at the time the 1984 Act became effective. In the case of an existing loyalty contract that was not accompanied by a BRL, the Interim Rule contemplated that the Commission would afford the parties some form of hearing before terminating the contract.[7]

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[4] "Loyalty contract" is defined in section 3(14) of the Act (and in the Commission's tariff rules at 46 CFR 580.2(k)) as:

> * * * a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or conference.

[5] The suggestion that the Commission abolish *all* loyalty contracts goes beyond the scope of this rulemaking and, moreover, appears contrary to the 1984 Act.

[6] On June 18, 1984, there were 34 loyalty contracts on file with, and approved by, the Commission. Thirty-three of these involved conferences of carriers. The limited legislative history relating to the loyalty contract provision in the Act indicates that while "loyalty contracts involving a single carrier would probably be lawful, * * * any concerted use of loyalty contracts by carriers is likely to violate the antitrust laws." 129 Cong. Rec. H8125 (daily ed. Oct. 6, 1983) (statement of Rep. Jones).

[7] As was stated in the Supplementary Information to the Interim Rule in addressing the concerns

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The same procedure would not necessarily apply to new loyalty contracts because the Interim Rule provides that the Commission will "reject" any loyalty contract that is not accompanied by a BRL. In addition to this procedural distinction, the possible broader antitrust exposure of new loyalty contracts must also be considered. Whatever the antitrust exposure of existing loyalty contracts may have been, the Commission believes, for reasons discussed below, that the use of a loyalty contract filed after June 18, 1984 may violate *both* the antitrust laws[8] *and* section 10(b)(9) of the Act. This suggests that the considerations which prompted the mandatory BRL requirement for existing loyalty contracts may be different from those applicable to new loyalty contracts.

Therefore, the Commission has decided to modify its procedures applicable to loyalty contracts by deleting the mandatory Business Review Letter requirement in the Final Rule. Section 580.16 will be modified in paragraph (b) to make the filing of a BRL *permissive*, with BRL's creating a presumption of legality under section 10(b)(9) of the 1984 Act. Paragraph (a) of § 580.16, which requires that conferences and carriers reflect in their tariffs on file with the Commission any loyalty contract system employed, is mandated by section 8(a)(1)(E) of the 1984 Act and will be retained.

This amended procedure will leave the Commission free to address the merits of individual loyalty contracts under section 10(b)(9) on a case-by-case basis upon complaint or its own motion where circumstances warrant. The result will be to treat section 10(b)(9) in the same manner as any other act "prohibited" under section 10.[9]

It has been suggested that the use of a loyalty contract filed after June 18, 1984, while required to be "in conformity with the antitrust laws" under section 10(b)(9) of the 1984 Act, is an "activity" which otherwise enjoys antitrust immunity by virtue of section 7(a)(2) of that Act.[10] A review of the legislative history of the 1984 Act suggests othewise.

Section 7(a)(3) of H.R. 1878, as reported out of the House Merchant Marine and Fisheries Committee and the House Judiciary Committee, conferred antitrust immunity on:

(3) any loyalty contract in compliance with section 6 or any activity pursuant to such loyalty contract;

Section 6, to which section 7(a)(3) referred, set forth the requirements pertaining to loyalty contracts. There was significant disagreement between the two Committees regarding the contents of section 6. In order to resolve this dispute, the two Committees reached a compromise which resulted in the deletion of sections 6 and 7(a)(3) and the addition of what is now section 10(b)(9). The following explanation of the deletion of antitrust immunity was given on the floor of the House by Representative Jones:

The compromise eliminates subsection (a)(3), a provision no longer needed in view of the broader proscription on the use of loyalty contracts in section 9(b)(9) [now 10(b)(9)].

129 Cong. Rec. H 8125 (daily ed. Oct. 6, 1983) (statement of Rep. Jones).

It would appear, therefore, that Congress intends to subject loyalty contracts filed after June 18, 1984 to both section 10(b)(9) of the 1984 Act *and* the antitrust laws.[11] Accordingly, to construe section 7(a)(2) as conferring antitrust immunity on loyalty contracts could well frustrate the intent of Congress. Moreover, if Congress did not intend to impose liability apart from the antitrust laws, there would appear to have been no need for section (b)(9). In order to give meaning to section 10(b)(9), therefore, it would be logical and reasonable to construe it as imposing liability separate from that imposed by the antitrust laws.

III. Foreign Tariff Regulations General—Docket No. 84–24 (Sections 580.0 to 580.6; 580.8 to 580.11; 580.13 to 580.15)

On May 23, 1984, the Commission isued an Interim Rule in Docket No. 84–24 governing the publishing and filing of tariffs by common carriers in the foreign commerce of the United States to implement the 1984 Act (49 FR 21713). The Interim Rule was to become effective on June 18, 1984, and interested persons were permitted to file comments on or before June 22, 1984. In addition, persons believing the Interim Rule created serious problems were urged to bring those concerns to the Commission's attention in writing for immediate review without prejudice to the right of any such party to file further comments within the comment period.

Thereafter, on June 11, 1984, the Commission extended the comment period to July 23, 1984 (49 FR 24023). Between the May 23 and June 11 notices, two carriers filed "emergency" comments requesting certain technical amendments to the Interim Rule. The Commission acceded to the requests of those parties and adopted appropriate modifications.

Thereafter, final comments were filed by 36 parties or groups of parties [12]

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expressed by a commenter that paragraph (c) of the Interim Rule automatically terminated existing contracts without opportunity for hearing:

The rule simply does not provide for the "automatic" termination of loyalty contracts. Failure by the carriers and conferences to comply with the rule would require further action by the Commission under the 1984 Act. Such further action would necessarily afford the opportunity for any hearing required by law. 49 FR at 24697.

[8] In mandating BRL's in its Interim Rule, the Commission explained that:

Only the Department of Justice, which is charged with the enforcement of the antitrust laws, can provide carriers with some assurance that they will not be prosecuted under the antitrust laws for use of a loyalty contract. 49 FR at 20818 n. 2.

[9] As indicated in the "Supplementary Information" to the Interim Rule, substantive provisions of section 10, other than 10(b)(9), may be applicable to loyalty contracts. In *Federal Maritime Board v. Isbrandtsen Company, Inc.*, 356 U.S. 481 (1958), the Supreme Court set aside the Board's approval of a dual-rate system on the ground that it was a discriminatory and unfair method to stifle outside competition in violation of the 1916 Act. The substantive prohibitions underlying the *Isbrandtsen* decision have been carried over in one form or another to the 1984 Act in section 10. While the *Isbrandtsen* decision led to the 1961 enactment of section 14b, an amendment to the 1916 Act to permit dual rate contracts with Commission approval, section 14b was repealed by section 20 of the 1984 Act (46 U.S.C. app. 1719).

[10] Section 7(a)(2) of the 1984 Act (46 U.S.C. app. 1706) provides:

The antitrust laws do not apply to * * * any activity * * * within the scope of this Act, whether permitted or prohibited by this Act, undertaken or entered into with a reasonable basis to conclude that * * * it is pursuant to an agreement on file with the Commission and in effect when the activity took place.* * *.

[11] It is possible that shippers may also have antitrust exposure to the extent they are party to unlawful loyalty arrangements with such carriers.

[12] North Atlantic European Conferences (NEC); Greece/U.S. Atlantic Rate Agreement, Iberian/U.S. North Atlantic Freight Conference, Marseilles North Atlantic U.S.A. Freight Conference, Med-Gulf Conference, Mediterranean-North Pacific Coast Freight Conference, U.S. Atlantic & Gulf/Australia-New Zealand Conference, and West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference (WINAC); Trans-Pacific Freight Conference of Japan/Korea, Japan/Korea Atlantic and Gulf Freight Conferences, Trans Pacific Freight Conference (Hong Kong), New York Freight Bureau and Philippines North America Conference; Latin America Pacific Coast Steamship Conference, North Europe-U.S. Pacific Freight Conference, and Pacific Coast River Plate Brazil Conference and their Member Lines (Latampac); Chemical Manufacturers Association (CMA); Matson Navigation Company, Inc. (Matson); Zim Container Service; Inter-American Freight Conference (IAFC); Sea-Land Service, Inc. (Sea-Land); National Maritime Council (NMC); Westwood Shipping Lines, Inc.; Greene Companies International Inc.; Coordinated Caribbean Transport, Inc.; Neptune Orient Lines, Ltd.; Box Caribbean Agencies Trinidad Ltd.; Barber Blue Sea Lines, Inc.; Hanjin Container Lines, Ltd.:

Continued

representing all segments of the maritime community.

All of the comments have been carefully considered and many adopted. Several miscellaneous non-substantive administrative and technical changes have been incorporated into the Final Rule without being expressly discussed.

Some comments were received concerning sections of 46 CFR Part 580 which were not changed by the Interim Rule. The revisions to Part 580 that were made in this proceeding were limited to those required by changes in law brought about by the enactment of the 1984 Act. Accordingly, whatever their merits, comments suggesting substantive changes to Part 580 not contemplated by the Interim Rule are beyond the scope of this proceeding and will not be considered. Among such comments are NEC's suggestion to further define the term "all or a fixed portion" in the "loyalty contract" definition § 580.2(k)), and the recommended expansion of the "open rate" definition § 580.2(o)). Several other suggested non-substantive style or technical revisions which result in a simplification or clarification of Part 580 provisions were adopted, *e.g.*, § 580.3(j) (exceptions to the single tariff requirement) and § 580.2(w)(1) (electronic tariff filing format exception).

Summarized below are the significant suggestions of the commenting parties. These comments, together with discussion and disposition, are presented sequentially, according to the section number they address. Any comments not expressly mentioned herein, have either been incorporated as a technical change without discussion or have been found to be without merit, unwarranted, or unnecessary.

General Comments

One of the stated purposes of the 1984 Act is to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the U.S. foreign commerce. These regulations implement the tariff filing requirements of the Act.

Included in section 3 of the Act (46 U.S.C. app. 1702) are new and revised common carrier definitions. Common carriers are divided into two categories: ocean common carriers (otherwise known as vessel operating common carriers or VOCC's) and non-vessel-operating common carriers (also known as NVOCC's or NVO's). This latter type of carrier was not previously defined by statute. Because the Act makes no distinctions in the tariff filing responsibilities between VOCC's and NVOCC's, parties should note that the requirements contained in the Final Rule are equally applicable to both types of common carriers, whether they are domiciled in the United States or in a foreign country.

IAFC suggests that the Commission should explicitly state that any references to a section in Part 536 are amended to refer to the section with the same suffix number in Part 580.

The Commission has adopted IAFC's suggestion to the maximum extent possible. The Interim Rule stated that Part 536 of Title 46, Code of Federal Regulations was redesignated Part 580 and that all internal references would be changed accordingly. Such changes have now been made and any references to Part 536 have been deleted.

Section 580.1—Exemptions and Exclusions

Section 580.1(a)

Section 580.1(a) exempts bulk cargo, forest products, recycled metal scrap, waste paper and paper waste from tariff filing requirements consistent with the treatment of those commodities under the Act. NEC suggests that this paragraph be revised to allow common carriers and conferences to optionally file rates and charges on those exempted commodities in their tariffs.

While there does not appear to be any legal barrier to allowing the filing of rates and charges on exempted commodities on an optional basis by an individual carrier, conferences' authority to do so is not as clear. The issue is whether Congress' exemption of certain commodities precludes concerted rate action on those commodities with or without antitrust immunity. That issue will be the subject of a separate proceeding. At this point, conferences may file rates and charges on exempt commodities, at their option. However, this is permitted without prejudice to any subsequent Commission determination of the legality of such practices.

However, to the extent carriers and conferences elect to file rates and charges on exempt commodities, the Final Rule makes it clear that the prohibitions of section 10 of the 1984 Act and any other statutory and/or regulatory requirements applicable to non-exempt commodities will apply to such filings.

Section 580.2—Definitions

Section 580.2(b)

CMA urges the Commission to clarify that bulk cargo loaded in LASH and Seabee barges is included within the definition of "bulk cargo." This suggestion is consistent with earlier Commission interpretations, and has, accordingly, been incorporated into the Final Rule.

Section 580.2(e)

NEC notes that the Commission, in defining "common carriers" in § 580.2(e), used the term "responsibility", but used the term "liability" in § 580.8(b)(3) when describing the obligations of common carriers, and requests a clarification of these terms.

The definition contained in § 580.2(e) reflects the Act's definition of "common carrier." There was no intention to create a distinction between "responsibility" and "liability." In the interest of consistency, "responsibility" is substituted for "liability" in § 580.8(b)(3) of the Final Rule.

Section 580.2 (i) and (j)

NEC submits that the definitions of "joint rates" and "local rates" in §§ 580.2 (i) and (j), respectively, are inadequate. It suggests that: (1) both be characterized as "ocean" rates; (2) "joint rates" be limited to route combinations resulting from transshipment agreements, and; (3) the definition of "local rates" expressly identify the specified types of prior or subsequent movements which do not alter the rate charged. The purpose of those suggestions is to allow a common carrier to employ other types of water carriers to perform part of the all-water service covered by its "local rates."

The Commission has substantially revised the intermodal tariff filing requirements of § 580.8 and has reduced the number of definitions. These revisions should eliminate any confusion between joint rates and local rates. Similarly, because the definition of "local rates" can reasonably be construed as permitting the employment of other water carriers by a common carrier in establishing an all-water route, the revisions suggested by NEC are not required.

Section 580.2(k)

Transpac, IAFC and NEC recommend that the definition of "loyalty contract" be revised to track the definition of section 3(14) of the 1984 Act. Transpac

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Central Gulf Lines, Inc.; International Tariff Filing Services, Inc. (Transax Data Corporation); Norton Lilly & Co., Inc.; Maritime Cost and Service Company; T.M.T. Shipping & Chartering of La. Inc.—Agents for Deppe Line; M. G. Otero Company Inc.; Hapag-Lloyd Transpacific Service; Yellow Freight International; Spartan International; Pacific Coast European Conference, Latin America/Pacific Coast Steamship Conference; Pacific Coast River Plate Brazil Conference; Southern Cross Overseas Agency, Inc.; Traffic Service Bureau, Inc.; Distribution-Publications, Inc.; Transmares S.A.; Interocean Express Line; Sherwood Medical; Foss Alaska Lines; TAT Airfreight, Inc.; and F.W. Myers & Co., Inc.

claims that the Interim Rule could be read to cover forms of arrangements not includable under the statutory definition.

The Commission has modified the definition of "loyalty contract" in the Final Rule as suggested by Transpac, IAFC, and NEC.

Section 580.2(p)

NEC suggests that the "open for public inspection" requirement for tariffs be eliminated entirely. It argues that no regulatory or commercial purpose is served by requiring carriers to maintain tariffs in all of the places the Interim Rule describes.

The Commission is presently giving consideration to the automation of tariffs. If and when tariff publications are automated, which would permit the ready retrieval of information at a variety of locations, this requirement may become unnecessary. Until that time, however, the need to have tariffs "open for public inspection" at locations convenient to the tariff user is the only practical way of implementing the publication requirement of section 8 of the Act.

Section 580.2(q)

NEC suggests that "another country" be used instead of "foreign country" in defining "person" and elsewhere in the Final Rule. "Foreign country" is used in the Act's definition of "person" and will be retained.

Section 580.2(w)(1)

NEC recommends that the Final Rule allow the electronic filing of entire tariffs and not just "tariff pages". It argues that because § 580.5(a) requires title pages to be filed on "heavier paper than the paper used in the body of the tariff" an exception should be made for those title pages filed electronically to avoid the problems inherent in using two different qualities of paper on computer printers.

The NEC comment is well taken. Accordingly, the Final Rule eliminates the "heavy paper" requirement for title pages in § 580.5(a).

Section 580.3—Filing of Tariffs; General

Section 580.3(j)

NEC suggests that an exception to the single tariff requirement for conferences and rate agreements be allowed for ratemaking agreements between groups of conferences, or between conferences and independent carriers, or new conference agreements, new members to such agreements, or enlargements of the geographic scope of conference agreements. NEC argues that, administratively and practically, effective tariff harmonization cannot be accomplished by a newly approved agreement's effective date and that, therefore, the Commission's present single tariff requirement has to be routinely waived whenever a new conference is formed or an existing conference's authority is expanded.

NEC's suggestion has merit and is incorporated in the Final Rule.

Section 580.4—Tariff Format

Section 580.4(f)

The Interim Rule eliminated a previous Part 536 requirement that a check sheet be included in a tariff. The Final Rule makes such "check sheets" optional. Check sheets are used to provide a record of the correction numbers assigned to amendments issued to tariffs. Typically, correction numbers are handwritten on the check sheet as the new tariff amendments are published or, for the agency's purposes, as the amendments are recieved for filing with the Commission. A limited number of tariff publishers avoid the manual notation of correction numbers on check sheets by publishing and filing a check sheet containing the preprinted numbers of all the effective corrections with page identifications each time the tariff is amended. This practice stems from the domestic tariff filing rules of the Interstate Commerce Commission which require such a control system.

Those opposing the elimination of check sheets described its use as a necessary means of confirming or ensuring that all amendments have been received and accounted for up to the date and correction number shown on the last entry on the check sheet. It is also argued that the procedure preserves the integrity of rate quotations.

Many comments were directed towards describing the commenters' individual needs for tariff check sheets. Most of the comments noted that without a check sheet a tariff user would be unable to determine whether the publication was complete at any given time. It is pointed out that under the check sheet recording system, gaps in the numbers noted on the check sheet alert a tariff user to the potential that there may be page amendments missing or unaccounted for which could affect any rate quotation or tariff rule. Check sheets are also said to be used to monitor rate changes of selected carriers where, by merely recording the latest correction numbers, a competing carrier or tariff watching service can readily determine at any later date the identification of pages or rate changes which were filed since the tariff was last reviewed.

Admittedly, the check sheets provide a simple means of monitoring tariff changes. However, at issue here is whether the Commission should be called upon to bear the considerable expense and burden of maintaining the tariff check sheet requirement for use by the shipping industry when, for the purpose of carrying out its functions and responsibilities, the check sheet is not necessary to the Commission.

From the Commission's standpoint the check sheet serves little, if any, regulatory or tariff husbanding purpose. When a new or initial tariff is filed, every page is reflected as "original page." When a page is amended, the replacement page must be numbered in a numerically consecutive order with the first revised page cancelling the original page, the 2nd revised page cancelling the first revised page, etc. Hence, the highest numbered revised page contains the rates in effect. The effective time period of any rate item is easily traced by observing the effective date published on each and every revised page. In the event that any consecutively numbered revised page is not received for filing (which would show up as a gap on a check sheet) the subsequent filing could be rejected since it would cancel a non-existing tariff page. The check sheet, it should be noted, does not alter the application of rates in any manner.

It is neither practical nor meaningful for the Commission to expend considerable time and resources working with a carrier or publishing agent when gaps or missing correction references occur on a check sheet because there is no requirement that the relating correction numbers be filed in consecutive order. A tariff filer who fails to place its publication on file, or fails to ensure that amendments are received by the Commission, does so at its own risk. The Final Rule contains provisions to provide for the receipt of tariffs and amendments. Because "filing" is elsewhere defined as receipt *by the Commission* (*see* 580.3(a)(1)) and the failure to file is a statutory violation, the check sheet safeguard is only a commercial convenience.

The Commission is not insensitive to the needs of persons utilizing tariffs and check sheets. However, it cannot afford to dedicate a substantial portion of its resources on functions which are superfluous to its regulatory responsibilities. In order to accommodate the needs of these persons, the use of check sheets will be permitted on a voluntary basis for use by such entities and not for processing by the Commission. This alternative is

preferable to either prohibiting them or imposing them as an additional regulatory burden on all tariff filers.

Section 580.5—Tariff Contents

Section 580.5(d)

Former § 536.5(d) governing "transshipment service" was deleted in the Interim Rule. Certain commenters note that the Commission's Interim Rule on agreements continues to require that any transshipment service be reflected in a tariff (46 CFR 572.310).[13] The Commission is urged to resolve the apparent conflict.

The Commission has decided to reinstate the transshipment service provision in the Final Rule to ensure consistency between the requirements of Part 580 and Part 572. However, to avoid subjecting tariff filers to unnecessary paperwork or expense, the Commission is deleting Exhibit 8, referred to in the previous § 536.5(c)(13), which specified a detailed format for transshipment service tariffs. Transshipment service tariffs which comply with the general tariff format requirements and the specific requirements of § 580.5(d)(13) should be sufficiently clear to serve their regulatory purpose.

Section 580.5(d)(18)

This section, redesignated § 580.5(d)(20) in the Final Rule, governs "overcharge claims" and provides, *inter alia*, that refund claims for overcharges may be filed within three years of the date the cause of action accrued. NEC contends that compliance with this section could be construed to constitute a waiver of constitutional rights and defenses.

Section 11(g) of the 1984 Act (46 U.S.C. app. 1710(g)) permits claims to be filed within three years. This change from the Shipping Act, 1916, which provided a two year limitations period, is reflected in the Final Rule. Questions regarding attempts to revive claims barred by the two year limitation of the 1916 Act will be determined on an *ad hoc* basis in cases where they arise. *See Application of Shipping Act of 1984 To Formal Proceedings Pending Before Federal Maritime Commission on June 18, 1984*, 49 FR 21798, May 23, 1984.

Section 580.6—Statement of Rates and Charges

IAFC urges clarification of the use of the terms "rate" and "charge", noting that although the terms are used conjunctively in the title to § 580.6, there is no reference to the term "charges" in the text of the section itself.

The Act requires the filing of both "rates" and "charges" but draws no clear distinction between them. The Final Rule will, therefore, reflect the statutory language where appropriate.

Section 580.8—Tariffs Containing Through Rates for Through Transportation

Many of the commenters suggestions intended to simplify and clarify filing regulations have been incorporated into the Final Rule. The provisions contained in the Final Rule should also more closely follow the statutory scheme of the 1984 Act.

Section 580.8(a)

Section 580.8(a) of the Final Rule defines only two intermodal tariffs terms: "through rate" and "through transportation." These are the only definitions needed to implement existing intermodal tariff filing requirements and concepts. The definitions of "contracting carrier," "joint through intermodal rate," "participating carrier," "through rate" and "through intermodal rate" contained in the Interim Rule were deemed unnecessary and have been deleted.

The Interim Rule defined the terms "contracting carrier" and "participating carrier" to draw distinctions between "through intermodal rates" and "joint through intermodal rates." The 1984 Act, however, does not make this distinction and requires only that each carrier and conference file tariffs showing all its rates, charges, etc., "* * * between all points or ports on its own route and on any through transportation route that has been established." (46 U.S.C. app. 1707). The Final Rule will allow common carriers and conferences to file through rates for any *type* of through transportation. The through transportation services provided by common carriers and conferences may be the result of various forms of contractual relationships between those participating in the service. The matter of a common carrier providing a through transportation service in conjunction with a carrier not subject to the Act is governed by § 580.8(b)(3), which requires common carriers to provide in the contract of affreightment a clear explanation of the carrier's responsibility when through transportation services are offered.

Section 580.8(b)

Section 580.8(b) prescribes tariff filling requirements for through transportation services. These requirements are in addition to those for port-to-port service tariffs.

Matson suggest that the Interim Rule be amended to clarify whether through rates must be published in separate tariffs or may be combined with tariffs containing port-to-port rates. Carriers and conferences will not be precluded from including both through rates and port-to-port rates in the same tariff publication. The Final Rule is clarified accordingly.

NEC commented that the Interim Rule should not be interpreted to require that a comprehensive list of services be named on the title page of each tariff. The Final Rule is amended to require that the title page of each through rate tariff contain only a list of the countries to, from, or between which the through rates apply, and a *brief* description of the modes of service offered under the tariff.

The Final Rule further modifies the previous tariff filing requirement that specific ports through which through shipments may move be listed, and permits carriers and conferences to name a range or ranges of ports to be utilized for through movements to reflect the routing for through intermodal transportation.

Likewise, the Final Rule carriers forward the Interim Rule provisions which allow common carries and conferences to establish through rates to, from or between all points within a region. While official government publications naming identified regions, such as the *National Five Digit ZIP Code and Post Office Directory*, are acceptable to specify a region, the suggestions of NEC and WINAC that tariff filers be permitted to define regions by non-official descriptions are rejected. Absent an objective standard to guide tariff writers and users, a proliferation of methods to describe regions can be anticipated, undermining the Commission's underlying policy of tariff simplification.

Sea-Land proposes several amendments to expand the disclosure of participating carrier services to all types of intermodal tariffs. In eliminating the definitions of "joint through intermodal rate" and "participating carrier", the Final Rule also necessarily does away with the Interim Rule's requirement that intermodal tariffs separately list each point served by each participating carrier. By expressly providing that inland through rate divisions need not be disclosed in intermodal tariffs, Congress made a basic determination not to subject the specifics of inland carrier rates to Shipping Act tariff disclosure. This policy underlies the

[13] Docket No. 84-26—*Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984*, (49 FR 22296; May 29, 1984).

elimination and simplication of many previously prescribed through rate tariff requirements as they applied to inland movements. Sea-Land's proposals are contrary to this basic policy and, therefore, are not adopted.

NEC suggests that the requirement in section 580.8(b) that tariffs contain on the "title page or an interior page referenced on the title page" a list of the points/ports to which the rates apply be eliminated because this information is already contained on the rate pages themselves and need not be repeated elsewhere. This suggestion will not be adopted. Absent a list or description on a tariff's title or interior page of the points/ports to which the tariff applies, tariff users would have great difficulty finding the rate to be applied to their particular shipments. Some title pages filed with the Commission have contained broad scope descriptions, *e.g.*, "European Continent," but internally listed ports/points in only a few countries. This has resulted in shippers being required to examine each page of a number of generally described tariffs, a practice which has substantially thwarted the underlying regulatory purpose of tariffs, *i.e.*, the ready disclosure of rates to shippers. It is only through a title or internal page listing that the tariff user is able to determine the scope of the publication and find the desired rate without having to page through each tariff. Accordingly, the Final Rule requires that the listing of points, ports, or regions be shown in Rule No. 1 of the tariff, and that the title page describe the general scope of the tariff by naming the countries to, from or between which the rates apply. These requirements will facilitate rapid determination of the appropriate intermodal tariff.

Section 580.8(c)

Section 580.8(c) of the Interim Rule governs amendments to intermodal tariffs. Latampac contends that this paragraph could allow an individual conference line to take one-day independent action on a new service point. This would allegedly cause disruptive intra-conference competition with a deleterious impact on the trades as a whole and would be inconsistent with conference authority to regulate advance notice of independent action, subject to the 10-day limitation of section 5 of the 1984 Act. Latampac urges the Commission to clarify §580.8(c) by reference to such conference authority under section 5 of the 1984 Act.

The Final Rule contains a number of provisions which may generally authorize filings that conflict with limitations placed on conference members by their particular conference agreement. Rather than complicate the Final Rule with a number of exceptions such as the one suggested by Latampac, the Commission will generally interpret such provisions as not authorizing violations of conference agreements. The provision allowing the filing of new inland points is retained and now appears in section 580.8(b).

NEC opposes exempting controlled carriers from the 30-day notice requirements with respect to tariffs establishing new or initial joint through intermodal rates and/or through intermodel rates. NEC argues that the Interim Rule repeals the special permission provisions of section 9(c) of the 1984 Act (46 U.S.C. app. 1708(c)) and that such an exemption otherwise undermines the purposes of the controlled carrier provisions of the statute.

NMC is also opposed to easing the 30-day notice requirements for controlled carriers. NMC contends that the Interim Rule appears to be inconsistent with the 1984 Act and recommends that the Commission reinstate the requirement that controlled carriers observe a 30-day filing period, subject to *ad hoc* exceptions, rather than extend exceptions on an across-the-board basis.

Likewise, Sea-Land recommends that the Commission apply a special permission approach similar to that found in § 580.10(a)(3) to allow controlled carriers' rates to be filed on less than 30 days notice in lieu of a general waiver of the notice period for rates that meet but do not go below those previously established by non-controlled carriers. Sea-Land claims that the proposed modification would maintain the proper conformity between Part 580 and section 9 of the 1984 Act.

To avoid a possible conflict with the intent of the controlled carrier provisions of the Act, section 580.8(c) is deleted. Controlled carriers will, therefore, remain fully subject to the requirements of section 9 of the 1984 Act when publishing new or initial through rates for through intermodal transportation, unless special permission is granted under the provisions of § 580.15 of the Final Rule. This does not alter the previous provisions of former Part 536, carried forward in the Final Rule, allowing the filing of open rates and lower independent action rates by controlled carriers on less than 30-days notice. *See*, sections 580.6(m) and 580.10(a).

In lieu of a provision governing amendments to intermodal tariffs, a new provision has been substituted at section 580.8(c) which governs multiple tariffs. As a result of the determination to allow multiple tariffs in a trade, common carriers and conferences can now be expected to publish rates for the same commodity in different tariffs based upon differences in the modes of services. Similarly, a commodity rate could also be closely related to a separately filed rate in a specialized commodity tariff. Therefore, to allow rate filers needed flexibility and at the same time enable the Commission and all tariff users to locate the appropriate through rate tariff, a new requirement to cross-reference all through rate tariffs when more than one such tariff is published in the same general trade area is imposed. This information must also be disclosed in Rule No. 1 of each tariff.

Exhibits

In addition to the other changes to the tariff filing requirements, new exhibits are provided to facilitate understanding of and compliance with the regulations.

The Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizations and small governmental jurisdictions.

List of Subjects

46 CFR Part 538

Antitrusts, Contracts, Maritime carriers, Rates.

46 CFR Part 580

Antitrust, Cargo, Cargo vessels, Contracts, Exports, Harbors, Imports, Maritime carriers, Rates and fares, Reporting and recordkeeping requirements, Water carriers, Water transportation.

Corrections

These final rules are subject to review and editing of form before publication in the Code of Federal Regulations. Users are requested to notify the Commission of any omissions and typographical type errors in order that corrections can be made before the Commission's CFR book goes to press in January 1985.

By the Commission.

Francis C. Hurney

Secretary

PART 538—[REMOVED]

Therefore, pursuant to 5 U.S.C. 553; secs. 3, 4, 5, 6, 8, 9, 10, 13, 15, 16, 17, and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1702–1705, 1707, 1709, 1712, 1714–1716, and 1718) Part 538 of Title 46, Code of Federal Regulations, is removed and Part 580 of Title 46, Code of Federal Regulations, is revised to read as follows:

PART 580—PUBLISHING AND FILING OF TARIFFS BY COMMON CARRIERS IN THE FOREIGN COMMERCE OF THE UNITED STATES

Sec.

580.0 Scope.
580.1 Exemptions and exclusions.
580.2 Definitions.
580.3 Filing of tariffs; general.
580.4 Tariff format.
580.5 Tariff contents.
580.6 Statement of rates and charges.
580.7 Filing of service contracts and availability of essential terms.
580.8 Tariffs containing through rates for through transportation.
580.9 Terminal rules, charges and allowances; free time allowed at New York.
580.10 Amendments to tariffs; rejection.
580.11 Supplements to tariffs.
580.12 Time/volume rates.
580.13 Governing tariffs.
580.14 Transfer of operations, transfer of control, changes in common carrier name and changes in conference membership.
580.15 Applications for special permission.
580.16 Loyalty contracts.
580.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
Exhibit No. 1 to Part 580—Title Page (Front) Format
Exhibit No. 2 to Part 580—Title Page (Reverse) Format
Exhibit No. 3 to Part 580—Class Tariff or Class and Commodity Tariff Index
Exhibit No. 4 to Part 580—Single Level of Rates, Packed/Unpacked Rates, Special Rates, Emergency Rates and Valuation Rates
Exhibit No. 5 to Part 580—Class Rate Tariff or Class Rate Section of Class and Commodity Tariff

Authority: 5 U.S.C. 553; secs. 3, 4, 5, 6, 8, 9, 10, 13, 15, 16, 17 and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1702—1705, 1707, 1709, 1712, 1714–1716 and 1718).

§ 580.0 Scope.

(a) These regulations govern the publication and filing of tariffs for the transportation of property performed by common carriers in the foreign commerce of the United States and by combinations of such common carriers, including through transportation offered in conjunction with one or more carriers not otherwise subject to the Shipping Act of 1984.

(b) Section 8 of the Shipping Act of 1984 requires common carriers and conferences of such common carriers to file with the Commission and keep open to public inspection, tariffs showing all rates and charges for transportation between U.S. and foreign ports and between points on any through route which is established. These regulations implement this requirement and, in addition, the requirements of sections 9, 10 and 16 of the Shipping Act of 1984. The tariff format and content requirements of this part also reflect the Commission's responsibilities in identifying and preventing unreasonable preference or prejudice and unjust discrimination pursuant to section 10 of the Shipping Act of 1984.

(c)(1) Compliance with this part is mandatory and any tariff submitted for filing which fails to meet criteria specified in this part is subject to rejection pursuant to § 580.10(d)(1). Upon rejection it shall be void and its use unlawful.

(2) Operating without an effective tariff on file with the Commission or charging rates not in conformance with such a tariff is unlawful and, pursuant to section 13 of the Shipping Act of 1984, is subject to a civil penalty of not more than $5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of civil penalty may not exceed $25,000 for each violation. Each day of a continuing violation constitutes a separate offense. Additionally, the Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months.

§ 580.1 Exemptions and exclusions.

(a) This part does not apply to bulk cargo, forest products, recycled metal scrap, waste paper and paper waste, except that carriers or conferences which voluntarily file tariff provisions covering otherwise exempt transportation thereby subject themselves to all statutory provisions and the requirements of this part, including the requirement to adhere to the filed tariff provisions.

(b) This part does not apply to transportation of cargo between foreign countries, including that which is transshipped from one ocean common carrier to another (or between vessels of the same common carrier) at a U.S. port or transferred between an ocean common carrier and another transportation mode at a U.S. port for overland carriage through the United States, where the ocean common carrier accepts custody of the cargo in a foreign country and issues a through bill of lading covering its transportation to a foreign point of destination.

(c) The following services are exempt from the tariff filing requirements of the Act and the rules of this part:

(1) Transportation by vessels operated by the State of Alaska between Prince Rupert, Canada and ports in southeastern Alaska, if all the following conditions are met:

(i) Carriage of property is limited to vehicles;

(ii) Tolls levied for vehicles are based solely on space utilized rather than the weight or contents of the vehicle and are the same whether the vehicle is loaded or empty;

(iii) The vessel operator does not move the vehicles on or off the ship; and

(iv) The commom carrier does not participate in any joint rates establishing through routes or in any other type of agreement with any other common carrier.

(2) Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington and Prince Rupert, Canada, if such vehicles and personal effects are the accompanying personal property of the passengers and are not transported for the purpose of sale.

(3) Transportation of mail between the United States and foreign countries.

(4)(i) Transportation by Incan Superior, Ltd. of cargo moving in railroad cars between Thunder Bay, Ontario and Superior, Wisconsin, if:

(A) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and

(B) Certified copies of the rate divisions and of all agreements, arrangements or concurrences entered into in connection with the transportation of such cargo are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(ii) This exemption is inapplicable to cargo originating in or destined to foreign countries other than Canada.

(5)(i) Transportation by water of cargo moving in rail cars between British Columbia, Canada and United States ports on Puget Sound, and between British Columbia, Canada and ports or points in Alaska, if:

(A) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and

(B) Certified copies of the rate divisions and of all agreements, arrangements or concurrences entered into in connection with the transportation of such cargo are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(ii) This exemption is inapplicable to cargo originating in or destined to foreign countries other than Canada.

(6)(i) Transportation by water of cargo moving in bulk without mark or count in rail cars on a local port-to-port rate basis between ports in British Columbia, Canada and United States ports on Puget Sound, if the rates charged for any particular bulk type commodity on any one sailing are identical for all shippers.

(ii) This exemption shall not apply to cargo originating in or destined to foreign countries other than Canada.

(iii) The carrier will remain subject to all other provisions of the Shipping Act of 1984.

(7) Transportation of used military household goods and personal effects by non-vessel-operating common carriers.

(d) The following services are subject to continuing special permission authority to deviate from the 30-day notice requirement of section 8 of the Act and the form and content requirements of this part: Transportation of U.S. Department of Defense cargo by American-flag common carriers under terms and conditions negotiated and approved by the Military Sealift Command (MSC), if all the following conditions are met:

(1) Exact copies of all common carrier quotations or tenders accepted by MSC are filed with the Commission as soon as possible after they are approved by MSC, but on not less than one day's filing notice prior to the effective date thereof;

(2) All tenders are filed in triplicate, one copy of which is signed and maintained at the Commission's Washington Office for public inspection;

(3) A letter of transmittal accompanies the filing stating that the documents are submitted in accordance with the requirements of the Shipping Act of 1984 and this section;

(4) Tenders submitted for filing are to be numbered by the respective common carriers as part of a distinct tariff series, with each common carrier's series to begin with the number "1" and run consecutively thereafter;

(5) Each tender which supersedes a prior tender must specifically cancel the prior tender by its series number; and

(6) Amendments or supplements to tenders must also be filed with the Commission upon not less than one day's filing notice and contain an appropriate reference to the original tender being amended or supplemented.

(e) *Controlled common carriers.* (1) A controlled common carrier shall be exempt from the provisions of this part exclusively applicable to controlled common carriers when:

(i) The vessels of the controlling state are entitled by a treaty of the United States to receive national or most-favored-nation treatment;

(ii) The controlling state subscribed, as of November 17, 1978, to the shipping policy statement contained in note 1, Annex "A" of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development;

(iii) As to any particular rate, the controlled common carrier's tariff contains an amount set by the duly authorized action of a ratemaking body, except that this exemption is inapplicable to rates established pursuant to an agreement in which all the members are controlled common carriers not otherwise excluded by this paragraph;

(iv) The controlled common carrier's rates, charges, classifications, rules or regulations govern transportation of cargo between the controlling state and the United States (including its districts, territories and possessions); or

(v) The controlled common carrier operates in a trade served exclusively by controlled common carriers.

(2) The Commission will notify any common carrier of its classification as a controlled common carrier.

(3)(i) Any common carrier contesting such a classification may, within 30 days after the date of the Commission's notice, submit a rebuttal statement.

(ii) The Commission shall review the rebuttal and notify the common carrier of its final decision within 30 days from the date the rebuttal statement was filed.

§ 580.2 Definitions.

For the purposes of this part, the following definitions of terms shall apply unless otherwise indicated by the context of this part (for other definitions see §§ 580.3(a)(1), 580.7(a), 580.8(a), 580.10(a)(1) and 580.12(a)):

(a) *Act* means the Shipping Act of 1984.

(b) *Bulk cargo* means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogeneous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the tariff filing requirements of this part.

(c) *Class rates* means rates applicable to all articles which have been grouped or "classified" together in a classification tariff or a classification section of a rate tariff.

(d) *Commodity rates* means rates applying to a commodity or commodities specifically named or described in the tariff in which the rate or rates are published.

(e) *Common carrier* means a person holding itself out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

(f) *Conference* means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff; but the term does not include a joint service, consortium, pooling, sailing or transshipment arrangement.

(g) *Controlled common carrier* means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by the government under whose registry the vessels of the common carrier operate; ownership or control by a government shall be deemed to exist with respect to any common carrier if:

(1) A majority portion of the interest in the common carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the common carrier.

(h) *Forest products* means forest products in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container, including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper board in rolls and paper in rolls.

(i) *Joint rates* means rates or charges established by two or more common carriers for ocean transportation over the combined routes of such common carriers.

(j) *Local rates* means rates or charges for transportation over the route of a single common carrier (or any one common carrier participating in a conference tariff), the application of which is not contingent upon a prior or subsequent movement.

(k) *Loyalty contract* means a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or conference.

(l) *Non-vessel-operating common carrier* means a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.

(m) *Ocean common carrier* means a vessel-operating common carrier; but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.

(n) *Ocean freight forwarder* means a person in the United States that:

(1) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(2) Processes the documentation or performs related activities incident to those shipments.

(o) *Open rate* means a rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority, in whole or in part, thereby permitting each individual common carrier member of the conference to fix its own rates on such commodity or commodities.

(p) *Open for public inspection* means the maintenance of a complete and current set of the tariffs used by a common carrier, or to which it is a party, in each of its offices and those of its agent in every city where it transacts business involving such tariffs.

(q) *Person* includes individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(r) *Proportional rates* means rates or charges assessed by a common carrier for transportation services, the application of which is conditioned upon a prior or subsequent movement.

(s) *Shipment* means all of the cargo carried under the terms of a single bill of lading.

(t) *Shipper* means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(u) *Tariff* means a publication containing and actual rates, charges, classifications, rules, regulations and practices of a common carrier or conference of common carriers. The term "practices" refers to those usages, customs or modes of operation which in any way affect, determine or change the transportation rates, charges or services provided by a common carrier, and, in the case of conferences, must be restricted to activities authorized by the basic conference agreement.

(v) *Tariff filing* means any tariff, or modification thereto, which is received by the Commission as properly filed pursuant to these rules.

(w) *Tariff filing, electronic* means the transmission of tariff filings to the Commission through the use of commercial data processing terminals. The data processing receiving terminal(s) are to be located in the Commission's Washington, D.C. offices. Tariff material filed electronically must conform to all the regulations applicable to permanent tariff filings, except as follows:

(1) Electronically filed tariff pages received from data processing terminals may be used for filing with the Commission; and

(2) Electronically filed tariff matter shall be accompanied by an electronically filed letter of transmittal.

§ 580.3 Filing of tariffs; general.

(a)(1) As used in this part the terms "file," "filed" or "filing," when used with respect to the filing of tariffs with the Commission, mean actual receipt at the Commission's Washington, D.C. offices.

(2) The Commission will receive tariff filings on an around-the-clock basis. Receipt of tariff filings during other than normal business hours will be time-stamped at a tariff mail drop located in the lobby of the Commission's Washington, D.C. offices. Electronic tariff filings transmitted to the Commission by electronic modes will be receipted by a date-time device on the receiving machine.

(b) Tariffs shall be published and filed by an officer or employee of the common carrier or, if a conference tariff, by an officer or employee of the conferences. In the alternative, publication and filing may be accomplished through an agent authorized to act for such common carrier or conference by a specific written delegation of authority.

(1) A common carrier or conference may delegate authority to a person, not an official or employee of such common carrier or conference, for the purpose of issuing all its tariffs or any particular tariff.

(2) Whenever there is a delegation of tariff-issuing authority by a common carrier or conference, there shall be filed with the Commission a written statement indicating the appointment of the agent and setting forth the exact limits of the agent's authority.

(c) (1) No common carrier or conference shall publish and file any tariff or modification thereto which duplicates or conflicts with any other tariff on file with the Commission to which such common carrier or conference is a party, whether filed by such common carrier, conference, or by an authorized agent.

(2) No common carrier shall publish and file any tariff or modification thereto which conflicts with any other tariff on file with the Commission and which names such common carrier as a participant therein.

(d) All tariffs published in a foreign language shall be accompanied by two true copies translated into the English language when submitted for filing, except that controlled common carriers shall submit three true copies translated into the English language.

(e) All tariff matter filed with the Commission shall be accompanied by a letter of transmittal which clearly identifies the tariff and pages involved. If the sender desires a receipt, a duplicate of such letter must be furnished together with a plain, self-addressed, stamped envelope measuring approximately 4½ by 9¾ inches. The duplicate letter will be stamped with the date of receipt and mailed to the sender in the envelope provided. If a duplicate letter and self-addressed stamped envelope are not submitted, a receipt will not be furnished.

(f) All tariff matter shall be filed in duplicate, except that controlled common carriers shall file all tariff matter in triplicate.

(g) Tariff filings shall be addressed to:

Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

(h) Each common carrier shall keep open for public inspection all tariffs published by it or to which it is a party in the foreign commerce of the United States.

(i) Common carrier participants in a conference tariff are not relieved from the necessity of complying with the Commission's regulations and the requirements of section 8(a)(1) of the Act with regard to keeping tariffs open for public inspection.

(j) A common carrier's obligation to file tariffs pursuant to section 8(a) of the Act and this part must be carried out as follows:

(1) When the common carrier is not a party to an agreement, by filing its own tariff or tariffs.

(2) When the common carrier is party to an agreement, by participation in a single tariff filed by the conference, except that this requirement shall not apply to:

(i) Ratemaking agreements either between or among conferences, or between one or more conferences and one or more independent carriers; or

(ii) New conference agreements, new members to such agreements, or enlargements of the geographic scope of conference agreements, until ninety (90) days after the fact, unless special permission to extend that period is granted for good cause shown.

(k) When a common carrier is admitted to membership in a conference, cancellation of the common carrier's individual tariff (if any) in the trade served by the conference and revision of the participating common carrier page of the conference tariff (naming the newly admitted common carrier) shall be published and filed with the Commission and may become effective upon the date of such filing, except that:

(1) If the common carrier has an individual tariff in the trade served by the conference and cancellation of that tariff and revision of the participating common carrier page of the conference tariff (naming the newly admitted common carrier) would result in an increase in that common carrier's rates, the common carrier shall, 30 days prior to being admitted as a new conference member, cancel its individual tariff effective 30 days from date of publication, making reference to the conference tariff and where it may be examined, unless special permission to become effective in less than 30 days has been granted by the Commission pursuant to § 580.15; and

(2) A controlled common carrier newly admitted to membership in a conference shall, 30 days prior to admission, file notice of cancellation of any applicable independent tariff effective upon the date of admission to conference membership, unless special permission has been granted by the Commission pursuant to § 580.15.

(l) [Reserved]

(m) Copies of all tariffs on file with the Commission (including all subsequent revisions and changes thereto) shall be made available by common carriers and conferences to any person. A reasonable charge may be made for this service.

(n) New or initial tariffs shall be published and filed to become effective not earlier than 30 days after publication and filing, unless special permission to become effective on less than 30 days' notice has been granted by the Commission pursuant to § 580.15.

(o) Rules applicable to tariffs containing rates, charges, rules and regulations for through transportation, set forth in § 580.8, are additional requirements for use only for through transportation and are not a substitute for any other requirements of this part.

§ 580.4 Tariff format.

(a) All tariffs which are filed and kept open to public inspection shall be clear and legible and shall be plainly printed, mimeographed, multilithed or prepared by some other similar permanent process on durable paper of good quality.

(b) No alteration in writing or erasure shall be made in any tariff publication.

(c) Sufficient marginal space of not less than three-fourths of an inch shall be allowed at the left side of each tariff page to permit insertion in tariff binders. In addition, a margin of not less than one-half inch shall be allowed at the bottom of each tariff page for application of the Commission's receipt stamp.

(d) Tariffs shall be in looseleaf form and printed on pages approximately 8½ by 11 inches. If other than a looseleaf tariff is to be filed, application for permission to make such filing shall be made to the Commission. If permission to file other than a looseleaf tariff is granted by the Commission, such permission will set forth the form and manner of filing the tariff and any amendments or supplements thereto.

(e) (1) Tariff pages shall be printed on one side only and each page after the title page shall be numbered in the upper right-hand corner, except that the anti-rebating statement, as set forth in § 580.5(c)(2)(ii), must be published on the reverse side of the tariff title page (See Exhibit No. 2 to this part) or, alternatively, at any location in the tariff, provided that reference to such location is shown on the title page thereof.

(2) Each tariff page must show the name of the common carrier or conference for whose account the tariff is issued, the effective date, the page number, the FMC number of the tariff, etc., as illustrated by Exhibit No. 4 to this part.

(3) When the common carrier's tariff is a conference tariff, the common carrier shall ensure that the conference publishes the common carrier's tariff provisions in the conference tariff.

(f) To the extent applicable, all tariffs filed pursuant to this part shall be arranged in the following order:

Title Page; Check Sheet (optional); Table of Contents; Participating Common Carrier Page; Surcharge and/or Arbitrary/Differential/Outport Differential (or other identifying term) Section; Rules and Regulations Section; Index of Commodities and Classifications; Commodity Rate Section; Classification and Class Rate Section; and Open Rate Section.

§ 580.5 Tariff contents.

(a) The first page of every tariff shall be a title page which shall contain the following information (see Exhibit No. 1 to this part):

(1) The name of the common carrier, appropriately identified as a Non-Vessel-Operating Common Carrier or a Vessel-Operating Common Carrier, or the name of the conference. Tariffs filed pursuant to an agreement shall be further identified with the agreement number. A controlled common carrier subject to section 9 of the Act shall so identify itself under the common carrier name on the title page.

(2) An FMC tariff number assigned by the common carrier or conference. For example:

Smith Line Tariff FMC–1.

The first tariff filed by a common carrier or conference pursuant to this or any prior regulation shall be assigned the number FMC–1. Each tariff thereafter issued by the common carrier or conference shall be assigned the next, consecutive FMC number. Beneath the FMC tariff number shall be shown the number or numbers of any FMC tariff or tariffs cancelled by the issuance of such tariff. For example:

Smith Line Tariff FMC–14 cancels Smith Line Tariff FMC–5 and Smith Line Tariff FMC–9

or

Smith Line Tariff FMC–14 cancels Smith Line Tariff FMC–12.

(3) When an individual common carrier, partnership or joint service

operates under a trade name, the legal name or names of each individual common carrier shall be shown as well as the trade name. Alternatively, reference may be made to an internal tariff page where this information is shown.

(4)(i) A list of the ports/regions covered by the tariff or reference to an internal tariff page where such ports/regions are listed. In lieu of such listing of ports, a statement of the range of ports served will be accepted if any exclusion of a port within the range or any restriction applying at a port within the range is specifically stated.

(ii) Whenever tariff application is shown by identification of a range of ports in lieu of listing individual ports, such range of ports must be within a geographical area generally served by the common carrier(s) participating in the tariff.

(5) A statement showing the type of service offered by the common carrier(s), e.g., direct service, transshipment, etc. When transshipment service is indicated, reference shall be made to the page in the tariff describing such service.

(6) A statement showing the type of rates contained in the tariff. For example: local, proportional, through, class, commodity, overland common point, etc.

(7) A reference to other publications which in any manner govern the tariff. Alternatively, reference may be made on the title page to an internal page identifying such governing publications as prescribed in paragraph (c)(8) of this section.

(8) The date on which the tariff will become effective. Every tariff in which any provision is to become effective upon a date different from the general effective date of such tariff shall so indicate in substantially the following form:

Effective: ————(except as otherwise herein provided) or (except as provided in Item No. ————) or (except as provided on page ————).

(9) The name, title and address of the person issuing the tariff or, if the common carrier or conference has appointed a tariff filing agent pursuant to §580.3(b), the name, title and address of the agent making such filing.

(10) An expiration date if the entire tariff publication is to expire on a specified date.

(11) The names of all participating common carriers in the tariff if more than one common carrier participates. Alternatively, reference may be made to an internal page on which are listed the names of all participating common carriers (see paragraphs (c)(2) and (c)(3) of this section).

(12) The subscription price of the tariff (and any major components thereof offered separately) or a statement that the entire tariff will be furnished without charge, accompanied by a reference to a tariff rule which clearly states where subscriptions may be obtained and the materials which will be furnished to subscribers.

(b) All pages after the title page shall be numbered beginning with "Original Page 1," "Original Page 2," etc. Each page as thereafter revised shall be a consecutively numbered revision of the same page in the form required by paragraphs (a)(6 and (a)(8) of § 580.10. (See Exhibit No. 4 to this part).

For example:

The 7th page in a tariff as originally filed would be titled "Original Page 7." The first revision of this page would be titled "First Revised Page 7 cancels Original page 7."

(c) The body of the tariff shall contain the following:

(1) A table of contents containing a full and complete statement of the exact locations where information in the tariff will be found. Such statement shall list all subjects in alphabetical order and shall show the page number and number of the item, rule or unit where such subject will be found.

(2)(i) The full legal name of each participating common carrier, appropriately identified as a Non-Vessel-Operating Common Carrier or Vessel-Operating Common Carrier and the address of its principal office. Where a joint service participates, the FMC number of the agreement authorizing the joint service shall also be shown.

(ii) Every common carrier shall publish a tariff provision to be effective upon filing which shall read substantially as follows (see Exhibit No. 2 to this part):

(Name of company) has a policy against the payment of any rebate by the company or by an officer, employee, or agent thereof, which payment would be unlawful under the United States Shipping Act of 1984. Such policy has been certified to the Federal Maritime Commission in accordance with the Shipping Act of 1984 and the regulations of the Commission set forth in 46 CFR 582.

(iii) When the common carriers's tariff is a conference tariff, the common carrier shall ensure that the conference publishes the common carrier's tariff provision set forth in paragraph (c)(2)(ii) of this section in the conference tariff.

(3) All trade names, if any, under which service will be provided and the names of the common carrier or common carriers operating under each such trade name if not shown on the title page.

(4) A list of the ports or ranges of ports to and from which the tariff rates apply, if not shown on the title page, in conformity with paragraph (a)(4) of this section.

(5) A statement indicating the extent of any limitation or restriction if the application of any of the rates, charges, rules or regulations stated in the tariff are restricted to any particular port, pier, etc., or otherwise limited.

(6) A single, complete, alphabetically arranged index listing all commodities for which the tariff names rates, together with a reference to each item or page where a particular article is shown. If a rate item embraces two (2) or more commodities, each commodity shall be shown in the index. Class rate tariffs and tariffs containing both class and commodity rates shall contain, in addition to applicable item or page references, the ratings of commodities to which class rates apply. (See Exhibit No. 3 to this part). Such index may be omitted where rates on less than 100 commodities are included in the tariff. All articles generic to different species of the same commodity should be grouped together. For example:

Paper, building; paper, printing; paper, wrapping.

(7) A full explanation of any symbols, reference marks or abbreviations used in the tariff. If such explanation does not appear on the page where the reference marks or symbols are used, such page shall refer to the page in the tariff where the explanation is given. The symbols shown in § 580.10(a)(7)(i) shall be used only for the purposes indicated therein.

(8) If governed in any manner by other publications, as may be permitted herein, a reference thereto substantially in the following form:

This tariff is governed, except as otherwise provided herein, by Bill of Lading Tariff FMC No. ———— (or by Rules Tariff No. ————), etc.

Where such reference is fully made on the title page, reference elsewhere in the tariff is unnecessary. Governing publications must be on file with the Federal Maritime Commission.

(9) All rates applicable to the transportation of the articles or classes of articles named in the tariff. Rates shall be stated as required by § 580.6.

(10) Rules and regulations which in any way affect the application of the tariff.

(d) Specific tariff rules shall be published to govern each of the following subjects and shall be designated in all tariffs by the numbers

and headings specified below. In the event that a specified rule does not apply to the service offered, the rule number and heading shall be published with a statement that the rule is not applicable. For example: "*Rule No. 15. Open Rates.* Not Applicable."

(1) *Scope.* A lost of the ports or range of ports to and from which the tariff rates apply, if not shown on the title page, in conformity with paragraph (a)(4) of this section.

(2) *Application of rates.* A clear statement of all the services provided to the shipper and included in the transportation rates set forth therein.

(3) *Rate applicability rule.* A clear and definite statement of the time at which a rate become applicable to any given shipment.

(4) *Heavy lift.*

(5) *Extra length.*

(6) *Minimum bill of lading charge(s).*

(7) *Payment of freight charges.*

(i) A clear statement of all requirements for the payment of freight charges.

(ii) Currency restrictions, if any, must be specified and the basis for determining the rates of currency exchange must be set forth.

(iii) If credit is extended to shippers, the rule must include the credit terms available and the conditions upon which credit is extended. When credit applications or agreements are required, specimens of such applications or agreements shall be published as part of this rule.

(8) *Specimen Bill(s) of Lading.* A specimen copy of any bill of lading, contract of affreightment or other document evidencing the transportation agreement applicable to the service offered shall be submitted with the tariff, unless a separate bill of lading tariff is on file as permitted by § 580.13(a). Such documents shall not contain provisions inconsistent with the rules and regulations published in any applicable tariff.

(9) *Freight forwarder compensation.* A statement describing the rate or rates of compensation to be paid to licensed ocean freight forwarders on United States export shipments in accordance with § 510.23(b) of this chapter.

(10) *Application of surcharge and/or arbitraries, differentials, outport differentials or other identifying term.* Tariffs imposing upon the same shipment more than one surcharge and/or arbitary, expressed in percentage terms, shall also clearly state the manner in which the percentages shall be applied in computing the additional charges.

(11) *Minimum quantity rates.* Tariffs naming two or more rates for different quantities of commodities covered by the same description shall state:

When two or more freight rates are named for carriage of goods of the same description over the same route and under similar conditions and the application is dependent upon the quantity of the goods shipped, the total freight charges assessed against the shipment shall not exceed the total charges computed for a larger quantity, if the rate noted alongside a qualification specifying a required minimum quantity (either weight or measurement per container or in containers), will be applicable to the contents of the container(s), and if the minimum set forth is met or exceeded. At the shipper's option, a quantity less than the minimum level may be freighted at the lower rate if the weight or measurement declared for rating purposes is increased to the minimum level.

(12) *Ad Valorem rates.* A statement specifying the exact method of computing the charge (e.g., shipper's declaration, invoice value, delivered value), and the additional liability, if any, assumed by the common carrier in consideration therefor.

(13) *Transshipment.* Tariffs providing for transshipment service pursuant to an ongoing agreement shall provide:

(i) The through rate;

(ii) The routings (origin, transshipment and destination ports); additonal charges, if any (e.g., port arbitrary and/or additional transshipment charges); and participating carriers; and

(iii) A tariff provision substantially as follows:

The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating connecting or feeder carrier. Every participating connecting or feeder carrier, which is a party to transshipment arrangements, has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(14) [Reserved]

(15) *Open rates.* A clear and complete explanation of the extent to which conference rates have been opened pursuant to paragraphs (l) and (m) of § 580.6. Any restriction or limitation on the right of participating common carriers to fix their own rate items, and the extent to which applicable rules and regulations of the conference tariff will continue to govern the rates filed by each individual line, shall also be stated.

(16) *Explosives or other dangerous articles.* A clear statement of all regulations governing the transportation of explosives, inflammable or corrosive material, or other dangerous articles, or a reference to a separate publication which contains such regulations.

(17) *Green salted hides.* A rule which requires that:

(i) The shipping weight for purposes of assessing transportation charges be either a scale weight or a scale weight minus a deduction which amount and method of computation are specified in said rule; and

(ii) The shipper furnishes the common carrier a weighing certificate or dock receipt from an inland common carrier for each shipment of green salted hides at or before the time the shipment is tendered for ocean shipment.

(18) *Returned cargo.* Tariffs offering the return shipment of refused, damaged or rejected shipments, or exhibits at trade fairs, shows or expositions, to port of origin at the rates assessed on the original movement when such rates are lower than prevailing rates, shall also provide that:

(i) The return of shipments be accomplished within a specific period not to exceed one year;

(ii) The return movement be made over the line of the same common carrier performing the original movement, except that in the case of a conference tariff, return may be made by any member line when the original shipment was carried by a conference member under the conference tariff; and

(iii) A copy of the original bill of lading showing the rate assessed be surrendered to the return common carrier.

(19) *Shippers requests, consultations and complaints.* Clear and complete instructions in accordance with the effective agreement's provisions, stating where and by what method shippers may file their requests and complaints and how they may engage in consultation under section 5(b)(6) of the Act, together with a sample of the rate request form if one is used or, in lieu thereof, a description of the information necessary for processing the request or complaint.

(20) *Overcharge Claims.*

(i) No tariff in the foreign commerce shall limit the filing of overcharge claims with a common carrier for private settlement to a period of less than three years after accrual of the cause of action nor shall the acceptance of any overcharge claim be conditioned upon the payment of a fee or charge.

(ii) No tariff in the foreign commerce shall require that overcharge claims based on alleged errors in weight, measurement or description of cargo be filed before the cargo has left the custody of the common carrier.

(iii) Tariffs shall contain a rule which states that shippers or consignees may file claims for the refund of freight overcharges resulting from errors in weight, measurement, cargo description

or tariff application. This rule shall clearly indicate where and by what method such claims are to be filed with the common carrier and shall further advise that such claims may also be filed with the Federal Maritime Commission. At a minimum, tariffs shall contain the following provisions:

(A) Claims seeking the refund of freight overcharges may be filed in the form of a complaint with the Federal Maritime Commission, Washington, D.C. 20573, pursuant to section 11(g) of the Shipping Act of 1984. Such claims must be filed within three years of the date the cause of action accrued; and

(B) Claims for freight rate adjustments filed in writing will be acknowledged by the common carrier within twenty days of receipt by written notice to the claimant of the tariff provisions actually applied and the claimant's rights under the Act.

(e) Additional rules which affect the application of the tariff shall follow immediately the rules specified in paragraph (d) of this section and shall be numbered consecutively.

(f) Where a tariff rule affects only particular items or rates, the affected items or rates shall specifically refer to such rule.

(g) No rate tariff shall require reference to any other rate tariff for determination of any applicable rate, except that:

(1) Reference may be made to another tariff for terminal and accessorial charges;

(2) Returned cargo rates accompanied by the rule specified in paragraph (d)(18) of this section are permitted;

(3) Reference may be made to another tariff (not containing rates) for commodity lists or generic descriptions as provided in paragraphs (f) and (g) of § 580.6; and

(4) Reference may be made to another tariff (not containing rates) covering:

(i) Explosives, inflammable or corrosive materials, or other dangerous articles;

(ii) Bills of lading or contracts of affreightment;

(iii) Commodity classifications; and

(iv) Routing guides or other similar tariffs as provided in § 580.13.

§ 580.6 Statement of rates and charges.

(a) The application of all rates and charges shall be clear and definite and explicitly stated per 100 pounds, per cubic foot, per ton of 2,000 pounds, per ton of 2,240 pounds or some other expressly defined unit.

(b) All rates and charges shall be stated in a simple and systematic manner. Commodities and generic commodity groupings on which rates are stated shall be listed in alphabetical order. If published in the index, item numbers shall also be shown in the body of the tariff.

(c) Where rates are stated in amounts per package, the method of packing and specifications, showing size, measurement or weight of the packages to which such rates apply shall be shown.

(d) Where rates vary depending upon whether cargo is packed, crated, palletized, bundled, strapped, loose or otherwise prepared or delivered for shipment, there shall be a statement clearly and specifically governing the application of such rates. See Exhibit No. 4 to this part.

(e) Where rates and charges to or from designated ports are determined by the adding or subtracting of arbitraries or differentials to or from rates applicable at other ports, such application shall be clearly shown.

(f) A commodity item may, by use of a generic term, provide rates on a number of articles if such term contains reference to an item in the tariff which clearly defines the type of commodities contained in such generic term or which contains a complete list of such articles, or contains a reference to the FMC number of a separate tariff of the same common carrier or conference containing such definition or list of such articles.

Example: Packinghouse products as described in Item—; or packinghouse products as described under heading "Packinghous products" in FMC No.—or successive issues thereof.

(g) A separate tariff, not containing rates, may be filed by a common carrier or conference showing a list of the commodities on which rates published by reference to generic terms will apply; rate tariffs shall be made subject thereto as provided in paragraph (f) of this section.

(h) When commodity rates are established, the description of the commodity must be specific. Rates may not be applied to analogous articles.

(i) The rate section of a tariff may include a rate applicable to all commodities, or all commodities of a class, on which specific commodity rates are not stated in the tariff, to be called "cargo, n.o.s." (not otherwise specified), "general cargo" or other identifying name, or by broad generic heading such as "chemicals, n.o.s."

(j) A separate tariff naming rates on a group of related commodities may be published if such tariff contains all of the rates applicable to such commodities, which are published by the same common carrier or conference, to or from the same ports or points. When such tariffs are published, reference shall be made thereto in the tariff of general application for the same common carrier or conference, to or from the same ports or points.

(k)(1) Publication of rates which duplicate or conflict with the rates published in the same or any other tariff is prohibited.

(2) The publication of a statement in a tariff to the effect that the rates published therein take precedence over the rates published in some other tariff, or that the rates published in some other tariff take precedence over or alternate with rates published therein, is prohibited.

(3) Where a common carrier or conference publishes both commodity and class rates, a statement shall be published in the tariff clearly indicating which of the two rates shall apply on the commodity or commodities on which both class rates and commodity rates are published.

(l) Where a conference opens any or all rates, each tariff item so opened shall be amended to indicate the word "open" in place of the previously stated rates and shall indicate a reference to a published rule in the tariff clearly defining the word "open" as used in each tariff and indicate where the rates of the individual conference member lines on such items will be found.

(m)(1) Where a conference opens rates pursuant to paragraph (1) of this section, an individual conference member shall not charge rates on the open item unless and until the individual member files a proper tariff rate covering such item as required by these rules. This may be accomplished by the individual common carrier (or its tariff agent) filing a complete tariff pursuant to this part, or by the conference (or its tariff agent) filing a separate supplement at the end of the conference tariff indicating the rates which will be charged by each individual common carrier and the governing rules and provisions of the conference tariff applicable to each common carrier. Separate open rate tariffs may also be published by a conference (or its tariff agent). when conference members publish their open rates in a separate tariff, such tariffs must reference, on the tilte page, the conference tariff in which the open rated condition is reflected.

(2)(i) Controlled common carriers filing open rates are subject to the 30-day controlled common carrier notice requirement of § 580.10(a)(3)(i), except when special permission is granted by the Commission under § 580.15.

(ii) Notwithstanding paragraph (m)(2)(i) of this section, a conference may, on less than 30 days' notice, file reduced rates on behalf of controlled common carrier members for open-rated commodities:

(A) At or above the minimum level set by the conference; or

(B) At or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the Act, in the trade involved.

(n) Special or emergency rates, or rates conditioned upon an expiration date or other factor, shall be shown under the same commodity item, generic heading or class, in the same place in the tariff as the ordinarily applicable rates. (See Exhibit No. 4 to this part.)

(1) If only a portion of particular rates or other provisions will expire with a special date, a notation to that effect shall clearly be shown in connection with such items as indicated in Exhibit No. 4 to this part.

(2) Project rates may be placed in a special section of the tariff if the Table of Contents or Commodity Index contains a specific reference to "Project Rates."

(o) All rate pages shall be filed in the form and manner shown in Exhibit Nos. 4 and 5 to this part.

(p) The number of rate columns may vary as required to state rates to one or more ports, port groupings or port ranges. The width of all columns in the rate block section of tariff rate pages may vary as required. (See Exhibit No. 5 to this part.)

§ 580.7 Filing of service contracts and availability of essential terms.

(a) *Definitions.* The following definitions shall apply for purposes of this section:

(1) *Contract party* means a party signing a service contract as shipper, shippers' association, or ocean common carrier and any other named entity associated with such party entitled to receive or authorized to offer services under the contract, except that in the case of a shippers' association, individual members need not be named in the contract.

(2) *Geographic area* means the general location from which or to which cargo subject to a service contract will move in intermodal service.

(3) *Port range* means those ports in the countries of loading or unloading of the contract cargo that are regularly served by the contracting carrier or conference, as specified in the tariff applicable to the service in which the contract is to be employed, even if the contract itself contemplates use of but a single port within that range.

(4) *Service contract* means a contract between a shipper or a shippers' association and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo or freight revenue over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of either party.

(5) *Shipper* means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(6) *Shippers' association* means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(b) *Contract filing requirements.*

(1) Except for contracts relating to bulk cargo, forest products, recycled metal scrap, waste paper, or paper waste, every ocean common carrier and conference that enters into a service contract with a shipper or shippers' association shall file with the Director, Bureau of Tariffs, as specified in paragraph (e) of this section, a true and complete copy of each contract prior to its effective date.

(2) Service contracts involving the exempted commodities listed in paragraph (b)(1) of this section may be filed pursuant to this section at the option of the contract parties. Upon filing, such contracts will be subject to the same requirements as those contracts involving non-exempt commodities.

(3) Service contracts shall clearly state:

(i) The contract parties;

(ii) The essential terms, except that the origin and destination of cargo moving pursuant to the contract need not be stated in the form of "port ranges" or "geographic areas" but shall reflect the actual locations agreed to by the contract parties;

(iii) A unique service contract number bearing the prefix "SC";

(iv) The FMC number of the governing essential terms publication which contains the carrier's or conference's statement of essential terms;

(v) A specific reference to the essential terms number ("ET No. ——") in the governing publication which contains the summary of the essential terms of the contract as provided in paragraph (h) of this section; and

(vi) The shipment records which will be maintained to support the contract.

(c) *Confidentiality.* (1) All service contracts filed with the Commission will, to the full extent permitted by law, be held in confidence.

(2) Amendments to non-essential terms of a service contract will be accorded similar confidential treatment.

(d) *Modification and termination of contracts.* (1) The essential terms of a service contract cannot be modified during the duration of the contract.

(2) Service contracts may be terminated by mutual agreement of the parties.

(3) In the event of a contract termination as provided in paragraph (d)(2) of this section, if the minimum quantity required by the contract has not been met, the cargo previously carried under the contract must be rerated according to the otherwise applicable tariff provisions of the carrier or conference in effect at the time of such shipments, unless the contract itself provides an alternative procedure for dealing with such a situation.

(e) *Transmittal of service contracts.* Service contracts are to be filed in single copy contained in double envelopes which contain no other material. The outer envelope is to be addressed to the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573. The inner envelope is to be sealed, contain only the executed contract(s) and shall state: "This Envelope Contains a Confidential Service Contract." The top of each page of a filed service contract shall be stamped "Confidential."

(f) *Contract implementation, return and rejection.* (1) Performance under a service contract may begin without prior Commission authorization, on the date the service contract and statement of essential terms are on file with the Commission.

(2)(i) Within 15 days of filing of the contract and statement of essential terms, the Commission may return to the contract parties a service contract or statement of essential terms that does not conform to the requirements of paragraph (b) or paragraph (g) of this section. The Commission shall provide the contract parties a written explanation of the reasons for such return. The contract parties shall have 15 days from the date of return to refile the contract or statement of essential terms.

(ii) Within 15 days of refiling, the Commission may reject a refiled

contract or statement of essential terms that does not conform to the requirements of paragraph (b) or paragraph (g) of this section.

(3)(i) If a returned service contract or statement of essential terms is not refiled, performance under the service contract shall be unlawful after the 15-day refiling period has expired.

(ii) If refiled and subsequently refected, performance under the service contract shall be unlawful after the contract parties receive notice of the rejection.

(4) If performance under the service contract becomes unlawful by operation of this paragraph, all services theretofore performed under the service contract shall be rerated in accordance with the otherwise applicable tariff provisions for such services.

(5) The minimum 30-day period of availability of essential terms required by paragraph (g) of this section shall be suspended upon return of a service contract or statement of essential terms and a new 30-day period shall commence upon refiling thereof.

(g) *Availability of essential terms.* (1)(i) A concise statement of the essential terms of each service contract shall be filed with the Commission and made available to the general public in tariff format pursuant to the requirements of paragraph (h) of this section.

(ii) The essential terms of each service contract must be made available to all shippers or shippers' associations similarly situated under the same terms and conditions for a specified period of no less than 30 days from the date of filing of the concise statement of essential terms.

(2) The essential terms shall include, where applicable, the following:

(i) The origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;

(ii) The commodity or commodities involved;

(iii) The minimum quantity of cargo or freight revenue necessary to obtain the rate or rate schedule(s);

(iv) The contract rate, rates or rate schedule(s), including any additional or other charges (viz. surcharges, terminal handling charges, etc.) that apply; provisions specifying methods of retroactive rate adjustments based upon experienced costs; and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges;

(v) The term of the contract;

(vi) Carrier or conference service commitments;

(vii) Liquidated damages for nonperformance, if any, or where the volume requirement may not be met during the contract period in situations other than those described in paragraph (g)(2)(viii) of this section, the rate, charge, or rate basis which will be applied; and

(viii) A clear description of any circumstance which will permit:

(A) A reduction in the quantity of cargo or amount of revenues required under the contract;

(B) An extension of the contract term without any change in the contract rate or rate schedule;

(C) A discontinuance of the contract; or

(D) Any other deviation from the terms of the contract.

(h) *Form and filing of essential terms.* (1) Each carrier or conference shall summarize the essential terms of service contracts it has executed in a governing publication on file with the Commission.

(2)(i) The form and manner requirements applicable to governing tariffs as set forth in this part shall apply to the essential terms publication.

(ii) Such publication shall include an alphabetical index of the commodities covered by the service contracts.

(3) All essential terms filings shall be printed in black on yellow paper.

(4) The essential terms of a service contract or contracts shall be identified with an essential terms number bearing the prefix "ET No." The "ET No." shall be located on the top of each page used to summarize the essential terms of a service contract or contracts.

(5)(i) The essential terms publication shall contain on its title page or in a rule of such publication reference to the carrier's or conference's tariff(s) of general applicability. The tariff of general applicability is the tariff which would apply in the absence of a service contract.

(ii) Every tariff of general applicability shall bear a reference to the FMC number of a carrier's or conference's governing essential terms publication.

(i) *Transmittal of essential terms publications.* At the same time that a service contract is filed with the Commission, publications containing the essential terms of service contracts shall be transmitted to the Commission with an accompanying transmittal letter in an envelope which contains only matter relating to essential terms. The envelope and the inside address on the transmittal letter are to be addressed to the "Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573."

(j) *Recordkeeping.* Every common carrier or conference shall maintain contract shipment records for a period of five years from the termination of each contract.

(k) *Submission of modifications.* Any time a service contract is modified, terminated, or extended, a notice to that effect shall be filed with the Commission.

§ 580.8 Tariffs containing through rates for through transportation.

(a) *Definitions.* The following definitions shall apply for purposes of this section:

(1) *Through rate* means the single amount charged by a common carrier in connection with through transportation.

(2) *Through transportation* means continuous transportation between points of origin and destination, either or both of which lie beyond port terminal areas, for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port.

(b) *Filing requirements.* Every common carrier and conference subject to the Act, which establishes through rates for through transportation shall file tariffs which state all such rates and related charges, rules, regulations, privileges or facilities, granted or allowed. Through rates may be filed in separate tariff publications or as a part of a port-to-port tariff. Such tariffs shall be filed and maintained in the manner set out in the Act and in accordance with the rules of this part. Through rate tariffs shall be filed in the name of the common carrier or conference subject to the Act. Through rate tariffs shall be initially filed on thirty days' notice as provided by sections 8 and 9 of the Act, unless a shorter notice is permitted pursuant to special permission. Amendments to tariffs containing through rates which provide for the addition of new inland points may, however, become effective upon publication and filing. Such tariffs shall contain the following provisions:

(1) The title page shall identify the tariff as a "through rate" tariff and shall also provide a brief description of the modes of services covered by the tariff (e.g., rail/motor/ocean services) and the trade area covered by the tariff. The trade area shall be described on the title page by naming the countries to, from or between which the through rates apply and the port(s) or range(s) of port via which through transportation will be performed.

(2) Rule No. 1 of each through rate tariff shall provide:

(i) A clear description of the points, regions, or ports to, from or between which the rates apply. Each point, region or port shall be described by its commonly used geographic name. The utilization of U.S. postal ZIP codes is permitted; and

(ii) The name of the port or ports via which through shipments will be moved; or a clear description of the range or ranges of ports via which through shipments will be moved.

(3) A contract of affreightment clearly setting forth the responsibility for through transportation which is consistent with the holding out provided by the application of the rates and conditions of the tariff.

(c) *Multiple tariffs.* Common carriers and conferences which publish more than one through rate tariff from, to or between the same points, ports or regions, based on mode of service, description of commodities, etc., shall provide in Rule No. 1 of each respective tariff a cross-reference to the FMC number and description of the application of such other tariff(s).

§ 580.9 Terminal rules, charges and allowances; free time allowed at New York.

(a) Every tariff filed pursuant to this part shall state separately all terminal or other charges, privileges or facilities under the control of the common carrier or conference which are granted or allowed to shippers.

(b) Wherever a tariff includes charges for terminal services, canal tolls or additional charges not under the control of the common carrier or conference, which merely acts as a collection agent for the charges, and the agency making such charges to the common carrier increases the charges without notice to the common carrier conference, such charges may be increased in the common carrier or conference tariff without being subject to the 30-day advance filing requirement of this part or separately stated on the bill of lading.

(c) Every tariff naming rates on import traffic shipped through the port of New York, or to a range of ports which includes New York, shall contain a rule in compliance with Part 525 of this chapter.

§ 580.10 Amendments to tariffs; rejection.

(a) *Tariff amendments.* (1) For the purposes of this part, "amendments" means all changes in, additions to, or deletions from a tariff.

(2) Amendments which provide for new or initial rates, or amendments which provide for changes in rates, charges, rules or other provisions resulting in an increase in cost to the shipper, shall be published and filed to become effective not earlier than 30 days after the date of publication and filing, unless special permission to become effective on less than said 30 days' notice has been granted by the Commission pursuant to § 580.15.

(3)(i) Amendments which provide for changes in rates, charges, rules, regulations or other provisions resulting in a decrease in cost to the shipper, or amendments which result in no change in cost to the shipper, may become effective upon publication and filing; except that all changes to controlled common carrier tariffs shall not become effective earlier than 30 days from the date of filing unless special permission has been granted by the Commission under § 580.15, or the change affects tariff matters which are the subject of a suspension proceeding, in which case § 580.11(g) shall apply.

(ii) Conferences may file on behalf of their controlled common carrier members lower independent-action rates on less than 30 days' notice, subject to the requirements of their basic agreements and subject to such rates being filed at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the Act, in the trade involved.

(4) An amendment containing a rate on a specific commodity not previously named in a tariff which is a reduction or no change in cost to the shipper may become effective upon publication and filing, if:

(i) The tariff contains a "cargo, n.o.s." or similar general cargo rate which would otherwise be applicable to the specific commodity;

(ii) The specific commodity rate is equal to or lower than the previously applicable general cargo rate; and

(iii) The common carrier is not a controlled common carrier which has not received special permission authorizing the amendment.

(5) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher "Cargo, n.o.s." or similar general cargo rate, is a rate increase and shall be published and filed to become effective not earlier than 30 days after the date of filing in the absence of special permission for an earlier effective date pursaunt to § 580.15.

(6) Looseleaf tariffs shall be amended by reprinting the entire page upon which any modification is made. An amended tariff page shall be designated in the upper right-hand corner as a "revised page" in the manner illustrated by Exhibit No. 4 to this part. For example:

First revised page 1;
or
First revised page 21.

(7)(i) The revised page filed to accomplish a tariff amendment shall reprint the page to be replaced in its entirety, changing only the matter on the page which is modified. Changes in existing rates, charges, classifications, rules or other provisions accomplished by an amendment shall be indicated on the revised page by the following uniform symbols:

(R) To denote a reduction.
(A) To denote an increase.
(C) To denote changes in wording which result in neither an increase nor a decrease in charges.
(D) To denote a deletion.
(E) To denote an exception to a general change.
(N) To denote reissued matter.
(I) To denote new or initial matter.
(K) To denote a rate or charge that is filed by a controlled common carrier member of a conference under independent action.

(ii) An explanation of such symbols shall be set forth in the tariff as required by § 580.5(c)(7).

(8) Each revised tariff page shall cancel the previously issued page upon which a change is made. The previous page being cancelled shall be indicated immediately under the designation of the new revised page number as illustrated by Exhibit No. 4 to this part. For example:

First revised page 1 cancels original page 1;
or
Fifth revised page 21 cancels fourth revised page 21.

All matter on a cancelled page which is not being changed shall be reissued on the revised page at it appeared on the page being cancelled.

(9) Each revised page shall, in the upper right-hand corner, state the effective date of the changes made on that page. Such effective date shall be subject to the requirements of sections 8 and 9 of the Act and of this section. Revised pages may also state the issue date.

(10) When a revised page cancelling a previous page deletes any matter contained in the previous page, the deletion shall be indicated by the symbol "(D)" and any other symbol under paragraph (a)(7)(i) of this section applicable to the effect of the deletion upon the common carrier's rates or charges.

(11) Every tariff amendment effective upon less than statutory notice pursuant to special permission granted by the Commission, shall show in connection

with such change the notation required by § 580.15(f).

(12) Increased rates brought forward from a previously filed page prior to their effective date, shall be designated with the symbol "(N)" as "reissued" and state their original effective date.

(13) If, on account of expansion of matter on any page, it becomes necessary to add an additional page in order to accommodate said new matter, such additional page (except when it follows the final page) shall be given the same number as the previous page with a letter suffix unless all subsequent pages are reissued and renumbered. For example:

Original Page 4–A, Original Page 4–B, etc.

If it is necessary to change matter on Original Page 4–A it may be done by issuing First Revised Page 4–A which shall indicate the cancellation of Original Page 4–A.

(14) When a revised page deletes rates, rules or other provisions previously published on the page which it cancels and such rates, rules or provisions are published on a different page, the revised page shall make a specific reference to the page on which the rates, rules or provisions will be found and the page to which reference is made shall contain the following notation in connection with such rates, rules or other provisions:

For (here insert rates, rules or other provisions in question) in effect prior to the effective date hereof see page ——.

Subsequently revised pages of the same number shall omit this notation insofar as this particular tariff matter is concerned.

(b) [Reserved]

(c) [Reserved]

(d) *Rejection of tariff amendments or other tariff publications.* (1) Any amendment (or other tariff publication) submitted for filing which fails in any respect to conform with the Act, or with the provisions of this part, is subject to rejection or partial rejection. When tariff matter is rejected, either in whole or in part, the Commission, acting through a designated official, will inform the person tendering the material for filing of the rejection by telegram, cablegram or letter.

(2) Upon receipt of notice of a rejection, the filing party shall immediately remove such rejected material from its effective tariff and immediately notify all subscribers to affected tariffs that the rejected material is void.

(3) The number assigned to an amendment (or other tariff publication) which has been rejected may not be used again. The rejected material may not be referred to in any subsequent amendment (or other tariff publication) in any manner whatsoever, except that a notation shall appear at the bottom of any new tariff matter issued to replace rejected matter which reads substantially as follows:

Issued in lieu of —— Page No. —— rejected by the Federal Maritime Commission.

§ 580.11 Supplements to tariffs.

(a) Supplements to tariffs may be filed only to accomplish the following:

(1) To cancel a tariff in whole or in part.

(2) To provide for a general rate decrease applicable to all, or substantially all, the commodities listed in a tariff.

(3) To provide for a general rate increase applicable to all, or substantially all, the commodities listed in a tariff.

(4) To indicate seasonal discontinuance, temporary suspension or reinstitution of service covered by a tariff .

(5) To provide for change in name of the publishing common carrier or its tariff agent.

(6) To indicate controlled common carrier rates which have been suspended by the Commission.

(b) Supplements filed pursuant to paragraphs (a)(2) and (a)(3) of this section which do not change the rates applicable to all listed commodities shall bear one of the following notations:

(1) The general rate increase/decrease provided for on this page applies to all commodities stated herein except the following (here list the excepted commodities or commodity item numbers); or

(2) The general rate increase/decrease provided for on this page applies to all commodities stated herein except those noted on page——.

(c) General rate change supplements (paragraphs (a)(2) and (a)(3) of this section) shall bear an expiration date that coincides with the date the changes will be reflected in the rates and charges in the tariff. Such date shall not be more than 90 days after the date of filing. No more than one such supplement may be in effect at any time.

(d) Additional supplements to other than looseleaf tariffs shall be filed as provided by any special permission authority granted by the Commission pursuant to §§ 580.4(d) and 580.15.

(e) Supplements shall be numbered consecutively on the upper right-hand corner of each page. For example:

Supplement No. 1 to FMC Tariff No. ——

(f) General rate increase/decrease supplements filed by controlled common carriers are subject to the 30-day notice requirements of § 580.10, unless special permission has been granted pursuant to § 580.15 or the change affects tariff matter which is the subject of a suspension proceeding, in which case § 580.11(g) shall apply.

(g) *Treatment of suspended tariff matter (controlled common carriers).* (1) Tariff matter filed by a controlled common carrier may be suspended at any time before its effective date. Tariff matter already in effect may be suspended upon issuance of a show cause order on not less than 60 days' notice to the common carrier. In either instance, the suspension period shall not exceed 180 days.

(2) Upon receipt of a suspension order the controlled common carrier shall immediately file a supplement which:

(i) Contains the specific rates, charges, classifications or rules suspended;

(ii) Cites the date upon which the suspension becomes effective; and

(iii) States that all use and application of the suspended tariff matter is deferred for the period specified in the suspension order.

(3) Controlled common carrier tariff matter filed to become effective during a suspension period in lieu of the suspended matter may become effective immediately upon filing or upon the effective date of the suspension, whichever is later. In determining whether to reject replacement rates, the Commission will consider whether such rates result in total charges (e.g., rate plus applicable surcharges) that are lower than the lowest comparable charges effective for a U.S.-flag or reciprocal-flag common carrier serving the same trade.

(i) The filing controlled common carrier shall identify the specific U.S.-flag or reciprocal-flag common carrier's rates, charges, classification or rules resulting in total charges which equal or are lower than its own.

(ii) All replacement filings shall state on the appropriate tariff page the following:

Filed pursuant to 46 U.S.C. app. 1708(d) and 46 CFR 580.11(g)

§ 580.12 Time/volume rates.

(a) *Definition.* "Time/volume rate", for the purposes of this section, means a rate published in a tariff which is conditional upon receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time.

(b) *General requirements.* (1) Time/volume rates may be offered by common

carriers or conferences. All rates, charges, classifications, rules and practices concerning time/volume rates must be published in an applicable tariff on file with the Commission. The time/volume rate offering must identify the shipment records which will be maintained to support the rate.

(2) Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment.

(3) Any shipper utilizing a time/volume rate must give notice to the offering carrier or conference of its intention to use such a rate prior to tendering any shipments under such an arrangement. Notice may be accomplished by any effective method deemed appropriate by the offering carrier or conference and set forth in the applicable tariff.

(4) Shipper notices and shipment records supporting a time/volume rate shall be maintained by any offering carrier or conference for at least five years after any shipper's use of a time/volume rate has ended.

(c) *Continuation of contracts.* Any contract with respect to a time/volume rate entered into prior to June 18, 1984, pursuant to former § 536.7, and in effect on that date, shall be permitted to remain in effect for the duration of the term specified in the contract or until June 17, 1985, whichever occurs first.

§ 580.13 Governing tariffs.

(a) If it is undesirable or impractical to include tariff rules or bills of lading/contracts of affreightment in a rate tariff as required by paragraphs (c)(10) and (d)(8) of § 580.5, such materials may be separately published and filed as a "rules tariff" and/or "bill of lading tariff." Classifications of freight and similar tariff matter may also be published and filed as separate "governing tariffs." Rate tariffs affected by such governing publications shall be made expressly subject thereto by the inclusion of a reference in substantially the following form:

Except as otherwise provided, this tariff is governed by (insert type of tariff) FMC No. ——.

(b) No rate tariff shall refer to or be governed by another rate tariff.

(c) Tariffs naming rates for the transportation of explosives, inflammable or corrosive material, or other dangerous articles, shall contain (as required by § 580.5(d)(16)) the rules and regulations issued by the common carrier or conference governing the transportation of such articles or reference to a separate publication, commercial or governmental, where such regulations are available to the general public.

§ 580.14 Transfer of operations, transfer of control, changes in common carrier name and changes in conference membership.

(a) Whenever a common carrier with an individual tariff on file changes its name or transfers operating control to another person, the person who will thereafter operate the common carrier service shall make appropriate tariff filings to indicate the change in name. Subsequent amendments to such tariffs shall be in the name of the new common carrier.

(b) Whenever the name of a common carrier which participates in a conference is changed, the conference shall file an appropriate amendment to its tariff indicating the participating common carrier's new name.

(c) Whenever the operation, control or ownership of a common carrier is transferred resulting in a majority portion of the interest of that common carrier being owned or controlled in any manner by a government under whose registry the vessels of the common carrier are operated, the common carrier shall immediately notify the Commission in writing of the details of the change.

§ 580.15 Applications for special permission.

(a)(1) Section 8(d) of the Act authorizes the Commission, in its discretion and for good cause shown, to permit increases in rates or the issuance of new or initial rates on less than statutory notice. Section 9(c) of the Act authorizes the Commission to permit a controlled common carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part. The Commission will grant such permission only in cases where merit is demonstrated.

(2) Typographical and/or clerical errors constitute good cause for the exercise of special permission authority but every application based thereon must plainly specify the error and present clear evidence of its existence, together with a full statement of the attending circumstances, and shall be filed with reasonable promptness after issuance of the defective tariff publication.

(b) Application for special permission to establish rate increases or decreases on less than statutory notice or for waiver of the provisions of this part, shall be made by the common carrier, conference or agent that holds authorization to file the tariff publication. Such applications shall be accompanied by a filing fee of $90.

(c) Application for special permission shall be made only by cable, telegram or letter except that in emergency situations, application may be made by telephone if the telephone communication is promptly followed by a cable, telex or letter and the filing fee of $90.

(d)(1) If the authority granted by special permission is used, it must be used in its entirety and in the manner set forth by the Commission.

(2) If the exact authority granted by the special permission is not used, and more, less or different authority is desired, a new application complying with the requirements of this part in all respects and referring to the previous special permission must be filed.

(e) Applications for special permission shall contain the following information:

(1) The name of the conference or carrier.

(2) The FMC number and description of the specific tariff involved.

(3) The rate, commodity, rules, etc. (related to the application), and the special circumstances which the applicant believes constitute good cause to depart from the requirements of this part or to warrant a tariff change upon less than the statutory notice period.

(f) Every tariff or tariff amendment filed pursuant to special permission granted by the Commission shall contain the following notation:

Issued under authority of Federal Maritime Commission Special Permission No. ——.

The filing common carrier(s) shall fill in the blank with the special permission letter and number assigned by the Commission. For example: No. F–1212 or No. CC–1212.

§ 580.16 Loyalty contracts.

(a) A sample of any loyalty contract, as defined in this part, must be filed in the applicable tariff together with rules which set forth the scope and application of the contract system.

(b) The use of any sample loyalty contract and applicable rules filed for inclusion in a tariff under paragraph (a) of this section shall be presumed to be "in conformity with the antitrust laws," within the meaning of section 10(b)(9) of the Act, if such contract makes reference to a Business Review Letter, issued pursuant to 28 CFR § 50.6, indicating no objection to the use of that contract.

§ 580.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget [OMB] for each agency information collection requirement:

Section	Current OMB control No.
580.3	3072–0009
580.7(f)	3072–0044
580.8 through 580.15	3072–0009

BILLING CODE 6730–01–M

EXHIBIT NO. 1 TO PART 580

Title Page (Front) Format
(See § 580.5(a))

ORIGINAL TITLE PAGE
TO
FMC NO. 1

EFFECTIVE DATE: JANUARY 1, 1985

CARLETON STEAMSHIP LINE

A VESSEL OPERATING COMMON CARRIER

FREIGHT TARIFF NO. 1

NAMING
CLASS AND COMMODITY RATES
AND
RULES AND REGULATIONS

GOVERNING THE TRANSPORTATION OF
GENERAL COMMODITIES
VIA
DIRECT/TRANSSHIPMENT SERVICE
(SEE PAGE 8)

FROM
U. S. PACIFIC COAST PORTS
(AS SPECIFIED IN RULE 1)
TO
PORTS IN JAPAN AND KOREA
(AS SPECIFIED IN RULE 1)

FOR REFERENCE TO GOVERNING PUBLICATIONS, SEE PAGE 11.

FOR LIST OF PARTICIPATING COMMON CARRIERS, SEE PAGE 4.

SUBSCRIPTION PRICE: U. S. $200.00 PER CALENDAR YEAR OR FRACTION THEREOF, INCLUDING ALL SUPPLEMENTARY MATTER AND REVISIONS THERETO. SEE RULE NO. 23.

ISSUED BY:

CARLETON B. JOHANSEN
ISSUING OFFICER
6402 BRYAN STREET
BUCKLER, CALIFORNIA 94199

EXHIBIT NO. 2 TO PART 580

Title Page (Reverse) Format
(See §§ 580.4(e) and 580.5(c)(2))

ANTI-REBATING POLICY

Carleton Steamship Line has a policy against the payment of any rebate by the company or any officer, employee, or agent thereof, which payment would be unlawful under the United States Shipping Act of 1984. Such policy has been certified to the Federal Maritime Commission in accordance with the Shipping Act of 1984 and the regulations of the Commission set forth in 46 CFR 582.

EXHIBIT NO. 3 TO PART 580

Class Tariff or Class and Commodity Tariff Index
(See § 580.5(c)(6))

CARLETON STEAMSHIP LINE FREIGHT TARIFF NO. 1	FMC NO.	ORIG/REV	PAGE
		1st Rev.	28
	FMC NO. 1	CANCELS	PAGE
FROM: U. S. PACIFIC COAST PORTS		Original	28
		EFFECTIVE DATE:	
TO : PORTS IN JAPAN AND KOREA		January 3, 1985	

COMMODITY AND/OR CLASS RATE INDEX

Commodity	Class or Item Number	Commodity	Class or Item Number
Abrasives.....	5	Implements, Agricultural....	1000
Acids.....	1	Iron or steel articles, viz:	
Agricultural Implements...	1000	Cable, rope and strand.....	2400
		Pipes and tubes.....	100
		Structural, N.O.S.....	85
		Washers.....	1315

NOTE: Where a tariff publishes both class and commodity rates, different numerical series must be used to differentiate between item numbers and class rating numbers. For example, as shown above, the class ratings are numbered from 1 to 100 and the commodity item numbers series begin with 1000.

EXHIBIT NO. 4 TO PART 580

Single Level of Rates, Packed/Unpacked Rates, Special Rates, Emergency Rates and Valuation Rates

(See §§ 580.4(e)(2); 580.5(b); 580.6(d); 580.6(n); 580.6(o) and 580.10(a))

	FMC NO.	ORIG/REV	PAGE
CARLETON STEAMSHIP LINE FREIGHT TARIFF NO. 1		2nd Rev.	33
	FMC NO. 1	CANCELS	PAGE
FROM: U. S. PACIFIC COAST PORTS TO : PORTS IN JAPAN AND KOREA		1st Rev.	33
		EFFECTIVE DATE:	
Except as otherwise provided herein, rates apply per ton of 1000 Kilos (W) or 1 Cubic Metre (M), whichever produces the greater revenue.		January 6, 1985	

Commodity Description and Packaging	Rate Basis	Rates in U.S. Dollars		Item No.
		Japan	Korea	
Fans, electric	W/M	76.00	---	3100-00
Fish, frozen, in bulk	W	230.00	237.00	3110-90
Iron and steel:				3600-10
Turnbuckles	W	29.50	32.00	
Emergency rate effective 1-15-85 to 3-15-85(R)1/	W	26.00	28.00	
Lime, hydrated, packed	W	29.25	34.75	4125-40
Medicines, patent preparations:				5000-10
Values up to $200 per 40 CFT	M	34.00	37.00	
Values exceeding $200 but not exceeding $500 per 40 CFT	M	52.75	58.00	
Values exceeding $500 per 40 CFT	M	67.75	74.00	
Tractors:				7127-05
Unpacked	W/M	145.00	154.00	
Packed	W/M	140.00	149.00	
Zinc, viz:				9259-00
Bars, circles, ingots, pigs, plates, sheets and slabs	2240 lbs or 40 CFT	---	49.00	
Ingots: Special rate effective 1-15-85 expiring 3-15-85(R)1/	2240 lbs	---	47.00	
Ingots: Special rate effective 3-15-85 expiring 6-15-85(R)1/	2240 lbs	---	48.00	

1/Symbols denoting a change, as set forth in § 580.10(a)(7), must be shown in the commodity description column either to the left or right of the commodity.

NOTE: All tariff pages, except the title page and reverse side of the title page, shall be filed in the form and manner as prescribed above the rate block on this page.

EXHIBIT NO. 5 TO PART 580

Class Rate Tariff or Class Rate
Section of Class and Commodity Tariff
(See §§ 580.6(o) and 580.6(p))

CARLETON STEAMSHIP LINE FREIGHT TARIFF NO. 1	FMC NO.	ORIG/REV	PAGE
		ORIGINAL	35
	FMC NO. 1	CANCELS	PAGE
FROM: U. S. PACIFIC COAST PORTS			
TO : PORTS IN JAPAN AND KOREA		EFFECTIVE DATE:	
CLASS RATES		January 1, 1985	

Except as otherwise provided, rates apply per ton of 2240 lbs. or 40 CFT whichever produces the greater revenue.	CLASS			
PORTS TO WHICH RATES APPLY	5	10	15	20
Ports A, B, C	$50.00	$82.50	$95.00	$102.00
Ports D, E, F, G	47.00	56.30	84.00	90.00
Ports H, I	37.75	53.00	66.00	78.00

[FR Doc. 84-29811 Filed 11-14-84; 8:45 am]
BILLING CODE 6730-01-C

46 CFR Parts 585 and 587

[Docket No. 84-22 (for Part 587)]

Actions To Address Conditions Unfavorable to Shipping in the Foreign Trade of the United States and Conditions Unduly Impairing Access of U.S.-Flag Vessels to Ocean Trade Between Foreign Ports

AGENCY: Federal Maritime Commission.

ACTION: Final Rules.

SUMMARY: These Final Rules revise and supersede the Commission's regulations in Subchapter D implementing section 19 of the Merchant Marine Act, 1920 and the Interim Rule implementing section 13(b)(5) of the Shipping Act of 1984 which became effective on June 18, 1984. The revision of Part 585 implementing section 19 of the 1920 Act merely makes technical corrections. The revisions of Part 587 implementing the 1984 Act relate to, among other items, definitions, factors which would indicate conditions unduly impairing access of U.S.-flag vessels in cross trades, petitions for relief, proceedings, decisions, sanctions and effective date of decisions.

DATES: Effective December 15, 1984.

FOR FURTHER INFORMATION CONTACT:
Robert A. Ellsworth, Director, Office of Policy Planning and International Affairs, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5870
Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

I. Regulations To Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States

In the Commission's program to review and republish all of its regulations since the passage of the Shipping Act of 1984 (the Act) (46 U.S.C. app. 1701), certain technical and style changes appeared to be required for Part 585, *"Regulations to Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States"* (formerly 46 CFR Part 506). These regulations implement section 19(1)(b) of the Merchant Marine Act, 1920 (46 U.S.C. app. 876(1)(b)). Previously, a Final Rule on Part 585 was published in the Federal Register at 49 FR 20816 (May 17, 1984) but further changes were deemed necessary.

The non-substantive technical and style changes to Part 585 reflect revisions in nomenclature and Commission organization, correction of typographical errors and removal of superfluous verbiage. Outdated and obsolete provisions have also been deleted. Also changed or deleted, where feasible, are citations to other laws required by recodifications and other statutory changes; references to the obsolete General Order system; "Provided, however"; and gender specific terms. There are no substantive changes to Part 585.

II. Actions to Address Conditions Unduly Impairing Access of U.S.-Flag vessels to Ocean Trade Between Foreign Ports

The Shipping Act of 1984 was enacted on March 20, 1984, with an effective date of June 18, 1984. Section 13(b)(5) (46 U.S.C. app. 1712(b)(5)) of the Act provides that:

> If, after notice and hearing, the Commission finds that the action of a common carrier, acting alone or in concert with any person, or a foreign government has unduly impaired access of a vessel documented under the laws of the United States to ocean trade between foreign ports, the Commission shall take action that it finds appropriate, including the imposition of any of the penalties authorized under paragraphs (1), (2), and (3) of this subsection [13(b)].[1]

On May 16, 1984, the Commission published in the Federal Register (49 FR 20654), corrected 49 FR 21931, May 24, 1984), an Interim Rule implementing section 13(b)(5) of the Act. The Commission provided ninety days for comments on the Interim Rule. Comments were received from: (1) Parties to FMC Agreement No. 10050 (Agreement No. 10050); (2) American President Lines Ltd.; (3) Chilean Line, Inc.; (4) China Ocean Shipping Company (COSCO); (5) Council of European and Japanese National Shipowners' Associations (CENSA); (6) Consultative Shipping Group (CSG)[2]; (7) Delta Steamship Lines, Inc. (Delta); (8) Government of Japan; (9) National Maritime Council (NMC); (10) Sea-Land Service, Inc.; (11) United States Department of State; (12) Transportes Navieros Ecuatorianos (Transnave); and (13) United States Department of Tranportation (DOT). After consideration of these comments, the Commission is issuing this Final Rule to supersede the Interim Rule.

[1] These penalties include suspension of the tariffs of a common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, and the imposition of a civil penalty of not more than $50,000 per shipment for the acceptance or handling of cargo for carriage under a tariff that has been suspended or after the common carrier's right to utilize that tariff has been suspended. *See* 46 U.S.C. app. 1712(b)(1)(3).

[2] The CSG includes the governments of Belgium, Denmark, Finland, France, Federal Republic of Germany, Greece, Italy, Japan, Netherlands, Norway, Spain, Sweden and the United Kingdom.

Discussion of Comments

Section 587.1. Purpose.

Section 587.1(a)

Agreement No. 10050 proposes definitions that it believes will clarify three terms: "U.S.-flag vessel," "U.S.-flag carrier," and "ocean trade between foreign ports."

"U.S.-flag vessel" is defined in the Interim Rule as "a vessel documented under the laws of the United States". Agreement No. 10050 takes the position that, while this definition is technically correct, it should be amended to make clear that the term includes vessels of all types, whether liner, bulk, tramp or other category as recognized in § 587.3(a). The Commission agrees with this clarification and the Final Rule is being revised accordingly.

The suggested change clarifies the definition of a U.S-flag vessel in the Final Rule. This definition is supported by the legislative history of the Act. Both the House and Senate Reports point out that section 13(b)(5) "is broad enough to permit retaliation against liner operators in U.S. trades for events occurring in foreign bulk trades." [3] As noted in the Reports, section 13(b)(5) supersedes section 14(a) of the Shipping Act, 1916. Congress, however, did not use the language of section 14(a) which limited relief to "a common carrier by water which is a citizen of the United States * * *." Instead, in section 13(b)(5) reference is made to the much broader category of vessels documented under the laws of the United States. For reasons stated above, we believe relief under section 13(b)(5) is intended to cover the types of U.S.-flag vessels mentioned in the Final Rule.

"U.S.-flag carrier" is defined in the Interim Rule as an "owner or operator of a U.S.-flag vessel". Agreement No. 10050 suggests that, in light of modern service freight systems, including intermodal, feeder, relay and other connecting operations, the definition be expanded so that relief under section 13(b)(5) is not limited to all-water or exclusively U.S.-flag vessel operations. The Commission has not adopted this suggestion because the Act only protects "vessels documented under the laws of the United States". The suggested changes would go beyond the scope of the Act.

In the area of intermodal transport, § 587.2(d) makes clear that relief is

[3] *See* H.R. Rep. No. 53, 98th Cong., 1st Sess. 22-23; S. Rep. No. 3, 98th Cong., 1st Sess. 38 (1983).

offered to U.S.-flag carriers in instances where a government or commercial practice results in, or may result in, unequal or unfair opportunity for U.S.-flag vessel access to port or intermodal facilities or services related to the carriage of cargo inland to or from ports in a cross trade. It is not necessary, therefore, to revise the definition of a U.S.-flag carrier to accomplish this purpose.

The phrase "ocean trade between foreign ports" was not defined in the Interim Rule. However, in the "Supplementary Information" accompanying the Interim Rule, it was pointed out that the phrase "ocean trade between foreign ports," includes intermodal movements. Agreement No. 10050 suggests that the phrase "ocean trade between foreign ports" be defined as "cargo moving entirely or in part by ocean carriage between ports and/or points in foreign countries." The Commission agrees that the phrase should be explained in the text of the Final Rule and has done so in § 587.1(a)(1) by inserting the words, "which includes intermodal movements," after "ocean trade between foreign ports."

CENSA notes that § 587.1(a) of the Interim Rule refers to only one of the purposes of the Act, which is to encourage the development of the U.S.-flag liner fleet (46 U.S.C. app. 1701). CENSA suggests that any action taken by the Commission must balance all of the Act's "purposes", including the other two which are: (1) To establish a non-discriminatory regulatory process; and (2) to provide an efficient and economic transportation system insofar as possible, in harmony with, and responsive to, international shipping practices.

Section 13(b)(5) protects U.S.-flag vessel access to cross trades, thus encouraging the development of the U.S.-flag liner fleet. To the extent that the other purposes of the Act are pertinent in any particular section 13(b)(5) matter, they will be taken into consideration.

Sections 587.1 (b) and (c)

Agreement No. 10050 suggests that § 587.1 (b) and (c) be strengthened to provide relief for *prospective* harm. Delta suggests changes in § 587.1(c) to authorize Commission action upon a finding that a U.S.-flag carrier will incur "imminent" harm in the trade. Transnave objects to any imposition of sanctions for prospective harm and suggests that paragraph (c) be changed to allow Commission action, but no punitive sanctions until actual harm is shown.

It is the Commission's intention, as pointed out in the Supplementary Information accompanying the Interim Rule, that Commission Flexibility to act swiftly when harm to a U.S.-flag carrier has been demonstrated or is imminent be preserved. In order to make this point clear, paragraphs (b) and (c) of § 587.1 of the Interim Rule are being amended to indicate that Commission action may be taken when undue impairment is "imminent".

On the other hand, we appreciate Transnave's concern with respect to remedial versus punitive measures that may be taken by the Commission on the basis of prospective harm. Should the Commission find that the adverse practice or activity from which relief is sought has not yet occurred, but that punitive sanctions are warranted when it does occur, such sanctions will be made effective concurrently with the actual implementation of the practice or activity threatening undue impairment of access. Section 587.7(c) of the Final Rule now so provides.

Delta points out that § 587.1(c) would appear to limit conditions unduly imparing the access of a U.S.-flag carrier to those where the carrier is unable to enter the trade or where actual participation is being eroded for reasons other than its commercial ability or competitiveness. Delta, therefore, suggests that this provision be expanded to enable the Commission to find impairment of access when a U.S.-flag carrier is prevented from *increasing* its participation in a cross trade for reasons other than its competitive ability.

The Commission agrees that the term "eroded" could be interpreted to limit the Commission's ability to find that the expansion of a U.S.-flag carrier's participation in a trade may have been unfairly restricted. The Interim Rule is, therefore, being amended to clarify this point by substituting the term "restricted" for "eroded."

Agreement No. 10050 and Delta recommend the deletion of the cautionary language in § 587.1(c) of the Interim Rule, which provides that section 13(b)(5) procedures should not be used as an instrument for the harassment of foreign-flag carriers operating in the U.S. foreign trades. These commenters believe that adequate safeguards against the filing of frivolous petitions are elsewhere provided for in the Interim Rule. CENSA, however, favors retention of the cautionary language.

The Commission agrees that the Rule otherwise provides ample safeguards against potential harassment. Section 587.3 allows the Commission to reject frivolous or deficient petitions and requires petitions for relief to be supported by affidavits and other supporting documents. Given these safeguards, the cautionary language in section 587.1(c) would appear unnecessary and is, therefore, deleted. This deletion, however, does not reflect a change in Commission policy. The Commission will carefully review section 13(b)(5) petitions in order to ensure that the procedures of Part 587 are not abused.

CENSA suggests that, when the Commission evaluates the operational ability of a carrier to offer a service, it consider recent U.S./CSG discussions on the criteria which such a carrier should meet. CENSA goes on to note that the specific criteria set out in the Interim Rule have been overtaken by developments in these discussions.

The Commission is aware of and closely follows the U.S./CSG discussions, which have centered on reaching an agreement regarding reciprocal competitive access for U.S. and CSG vessels to U.S. and CSG trades with developing nations. These discussions are ongoing and no agreement has been concluded between the United States Government and the CSG Governments. It would, therefore, be premature to even consider formalizing, in the Final Rule, the policies still under discussion.

Section 587.1(c) of the Interim Rule provided that the condition of unduly imparired access would be found only where a U.S.-flag carrier is "fit, willing and able" to enter a trade in which its access is being unduly impaired. Upon further consideration, the Commission does not believe that U.S.-flag carriers should be required to meet a rigid "fit, willing and able" standard with regard to foreign-to-foreign trades when foreign-flag carriers have free and unrestricted access to U.S. trades. Therefore, the term "fit, willing and able" has been deleted from the Final Rule and in its place is substituted the term "commercially able". The "commercially able" standard will still allow the Commission to screen out a frivolous petition without imposing an overly restrictive standard on U.S.-flag carriers.

Section 587.1(d)

Section 587.1(d) provides that when examining conditions in trade between foreign ports, and considering appropriate action, the Commission will give due regard to U.S. maritime policy and U.S. Government shipping arrangements with other nations, as well as the degree of reciprocal access afforded in U.S. foreign trades to the

carriers of the countries against whom action is requested.

CENSA and the CSG suggest that the Commission also give due regard to the U.S./CSG discussions, particularly on the issue of restrictive commercial practices and derogations from reciprocal competitive access. CENSA urges that complaints received by the Commission concerning restrictive commercial practices be first taken up at the diplomatic level with the governments of the carriers concerned. The CSG believes that the Commission should make clear that it would normally look to the CSG Governments to remedy any restrictive commercial practices in their trades. In addition, the CSG notes that the Commission should avoid any threat to derogations agreed upon in the U.S./CSG discussions. These derogations include certain government and commercial agreements which in some way restrict competitive access but were in effect prior to the start of the ongoing U.S./CSG discussions.

As discussed in connection with § 587.1(c) above, an agreement between the U.S. and CSG has not yet been accepted by either party and, therefore, cannot be considered by the Commission for the purposes of the Final Rule. In appropriate circumstances the Commission will, under § 587.6 of the Final Rule, request that the Secretary of State seek resolution of restrictive practices through diplomatic channels.

Section 587.2. Factors indicating conditions unduly imparing access.

This section provides various examples of factors which would be deemed to indicate conditions unduly impairing access of a U.S.-flag vessel to cross trades. Numerous comments addressed various portions of this section. DOT is generally concerned that certain of the listed practices of ocean carriers or foreign governments might be considered as *per se* impairment of access of U.S.-flag vessels to a cross trade. Specifically mentioned is § 587.2(c) which cites certain commercial activities, e.g. closed conferences employing deferred rebates, as indicating conditions unduly impairing access. The discussion below with respect to § 587.2(c) should allay any concern that closed conferences employing deferred rebates would be treated by the Commisison as *per se* violations of section 13(b)(5).

Delta suggests that this section be expanded to list additional factors indicating conditions of impaired access, including: (1) The existence of foreign intergovernmental agreements; (2) discriminatory fines, taxes or other financial penalties levied on cargo, shippers and consignees when using U.S.-flag vessels; and (3) discriminatory financial benefits granted to shippers or consignees when using other than U.S.-flag vessels.

The first factor suggested by Delta, i.e., foreign intergovernmental agreements, is too broad and indefinite to be included in this section. However, to the extent that an intergovernmental agreement reserved substantial amounts of cargo or otherwise restricted access to cargo, it could be a factor indicating unduly impaired access. Such cargo reservation arrangements are covered in § 587.2(b).

Fines (fees) for those employing U.S.-flag vessels or benefits for those not doing so are factors which the Commission would consider as unduly impairing access. Accordingly, § 587.2(a) is being so amended.

Section 587.2(a)

Section 587.2(a) states that the imposition upon U.S.-flag vessels of fees, charges, requirements, or restrictions different from those imposed on other vessels, or which preclude or tend to preclude U.S.-flag vessels from competing in the trade on the same basis as any other vessel, is a factor which may indicate unduly impaired access.

Agreement No. 10050 notes that § 587.2(a) of the Interim Rule does not make specific reference to "national-flag" operators. Agreement No. 10050 is concerned that this omission might be read as an unintended limitation on the scope of this section especially in view of the express reference to national-flag vessels in § 587.2(b). Such a limitation on the scope of § 587.2(a) was not intended. Section 587.2(a) is, therefore, being clarified by amending the phrase "from those imposed on other vessels" to read "from those imposed on national-flag or other vessels" in the Final Rule. This is not to say that imposition of different restrictions on national and non-national carriers results in a *per se* finding of conditions unduly impairing the access of U.S.-flag vessels. The United States Government itself makes a distinction between U.S.-flag carriers and other carriers under its various cargo preference statutes. The Commision will determine whether the alleged restrictions are unfair or unreasonable after consideration of all the facts relevant to each case.

COSCO reads §587.2 (a) and (d) as requiring that U.S.-flag vessels receive not merely the same treatment as other cross-trading vessels, but instead, treatment as favorable as is accorded vessels flying the flag of the bilateral trading partners. COSCO believes that the effect of these sections is to require foreign governments to give U.S.-flag vessels most favored nation (MFN) treatment.[4] COSCO asserts that the United States Government does not accord MFN treatment to COSCO vessels and concludes that these sections are contrary to principles of equality and mutual benefit.

As stated above, the Commission is charged by the Act with determining whether alleged restrictions are unfair or unreasonable to U.S.-flag vessel access. The Commission will make such a determination after consideration of all facts relevant to each case. Facts that the Commission would consider would include the treatment of national-flag and other vessels in U.S. cross trades, as well as the degree of reciprocal access afforded in U.S. foreign trades to the carriers of the countries against whom the Commission action is contemplated.

Agreement No. 10050 suggests that discriminatory burdens applied to intermodal and connecting services should be mentioned in § 587.2(a). We do not believe this change is necessary. As previously discussed, § 587.2(d) should adequately address the concerns regarding intermodal restrictions expressed by Agreement No. 10050.

Section 587.2(b)

Section 587.2(b) includes, as a factor indicating undue impairment, the "reservation" of a substantial portion of the total cargo in the trade to national-flag or other vessels which results in failure to provide reasonable competitive access to cargoes by U.S.-flag vessels. CENSA and the CSG suggest that this provision be clarified to indicate that it does not apply to commercial cargo-sharing arrangements. Agreement No. 10050 urges that it be strengthened to state that the United States will oppose cargo-sharing schemes and that 40/40/20 and other restrictive devices may be met by similar restrictions.

Use of the word "reservation" in § 587.2(b) refers to government reservation laws. Only governments can reserve cargoes to carriers. Commercial pools may allocate the commercial cargo captured by its members but these are cargoes for which they compete. Section 587.2(b) would, however, cover the situation where a commercial cargo-sharing agreement is government-influenced, or a conference pool or any

[4] In these circumstances MFN treatment would generally require that a nation give U.S.-flag carriers treatment, e.g., regarding port call notice, fees, etc., no less favorable than the treatment accorded that nation's most favored trading partner.

other conference practice operates in a predatory fashion, such that it is unduly impairing the access of a U.S.-flag carrier in a cross trade.

Section 587.2(c)

The Interim Rule provides that the use of predatory practices, including, but not limited to, closed conferences employing fighting ships or deferred rebates, is a factor which may unduly impair the access of a U.S.-flag vessel to cross trades. Although the wording of this paragraph follows the language used in both the House and Senate Reports,[5] which listed "closed conferences employing fighting ships or deferred rebates" as practices which could have the effect of unduly impairing the access of U.S.-flag vessels to trade between foreign ports, several commenters objected to its inclusion in the Interim Rule.

DOT, Department of State, CENSA, CSG and COSCO all suggest that specific references to closed conferences employing deferred rebates be deleted as a factor indicating unduly impaired access. It is pointed out that these practices are not unlawful in some foreign trades. As stated above, DOT believes that reference to these practices creates the impression that they may be considered as *per se* violations of section 13(b)(5).

Delta, on the other hand, submits that "closed conferences employing * * * deferred rebates," is one of the most effective devices used in foreign-to-foreign trades for closing a trade to outsiders and the fact that this practice is not considered predatory by many of our trading partners is irrelevant. Delta maintains that while the Commission need not impose U.S. open-conference policy on foreign-to-foreign trades to secure reasonable access to those trades for U.S. vessels, it should consider that policy in determining whether conditions exist which unduly impair the access of a U.S.-flag vessel.

Agreement No. 10050 suggests that the reference to possible entities which may engage in predatory practices be expanded to include not only "closed conferences" but all conferences, open or closed, pools and carriers employing fighting ships. Agreement No. 10050 would agree to the removal of the term "deferred rebates", provided that the Commission state that its removal is without prejudice to future consideration of finding deferred rebates as a factor impairing access.

The "factors" enumerated in § 587.2 were not intended to be either exclusive or conclusive. These practices would ultimately require a finding that they resulted in undue impairment of access before sanctions would be imposed. Thus, the mere existence in a trade of a closed conference which utilizes deferred rebates would not, in and of itself, support a conclusion that deferred rebates unduly impair access of a U.S.-flag vessel. It is only where they are used in a predatory fashion that such practices would violate this section. To make this clear we are inserting the word "possibly" prior to the phrase "including but not limited to closed conferences employing fighting ships or deferred rebates * * *" in § 587.2(c). Furthermore, the list of practices that may be predatory was not meant to be exhaustive. By its terms, § 587.2(c) includes use of any "predatory practice". Delta's suggestion that the Commission consider U.S. open-conference policy when determining whether undue impairment exists under § 587.2(c), is accommodated by § 587.1(d) which provides that the Commission will consider the degree of reciprocal access afforded in U.S. foreign trades to the carriers of the countries against whom Commission action is contemplated.

Section 587.2(d)

The Government of Japan suggests that the reference in § 587.2(d) to unequal treatment with respect to intermodal facilities is inappropriate for inclusion as a factor requiring retaliatory action because it extends U.S. regulatory authority to the domestic transportation systems of another country. Agreement No. 10050 supports retention of § 587.2(d).

In light of the world-wide growth and development of intermodal transportation systems, the reference in § 587.2(d) to "intermodal facilities and services" is necessary in order to provide meaningful protection to U.S.-flag vessels. Denial of the opportunity to compete for intermodal cargo on a fair basis can constitute an undue impairment of access in the same fashion as unfair discrimination in access to port-to-port cargo movements. For this reason, no change to section 587.2(d) is being made.

Sections 587.2 (b), (c), (d), and (e)

Agreement No. 10050 suggests that references to "U.S.-flag vessel(s)" in § 587.2 (b), (c), (d), and (e) should be changed to "U.S.-flag carrier(s)", thereby incorporating this commenter's proposed definition of "U.S.-flag carrier" which, in part, was meant to expand the coverage for relief to foreign-flag feederships of U.S. carriers. For the reasons discussed above in connection with § 587.1(a), Agreement No. 10050's proposed definition of "U.S.-flag carrier" is not accepted and changes to these paragraphs are not made.

Section 587.3. Petitions for relief.

Agreement No. 10050 suggests that a new paragraph be added to § 587.3 stating that petitioners may recommend time periods for Commission action on a petition. We are not adopting this suggestion. If a filing party desires to specify a time period for Commission action, it may do so under § 587.3(b)(9). However, due to the possible significant foreign policy implications of any action taken, the Commission believes it requires maximum flexibility in structuring section 13(b)(5) proceedings and determining when sanctions should be applied. It cannot be locked into any rigid, pre-determined time frames.

Section 587.3(a)—Filing

Agreement No. 10050 suggests that the term "U.S.-flag carrier" be substituted for the "owner or operator of a liner, bulk, tramp or other vessel documented under the laws of the United States" as the person who may file a petition for relief under § 587.3(a). This suggested language change is predicated on the Commission's acceptance of Agreement No. 10050's definition of "U.S.-flag carrier". For the reasons discussed above in connection with § 587.1(a), this suggestion is not adopted. In any event, a "U.S.-flag carrier" obviously may file a petition under § 587.3(a).

Section 587.3(b)—Contents

Section 587.3(b) lists what should be included in the contents of petitions for relief. Delta and Agreement No. 10050 believe that many of the mandatory submission requirements, e.g., certified documents, statistics, affidavits of fact and memorandum of law, should be made permissive. We disagree. By requiring a complete submission at the initial stage of the proceeding, the Commission is better able to move with dispatch if warranted. The mandatory requirements of this section therefore shall, except as modified below, be continued.

Delta and Agreement No. 10050 suggest that certain information, i.e., certified copies of foreign laws and certain statistics, may be difficult or impossible for the petitioner to provide, and that in such a case, the petition could be rejected by the Commission as deficient, causing undue delay or denial of consideration of an otherwise meritorious petition. The Commission understands that obtaining a certified

[5] *See* H.R. Rep. No. 53, 98th Cong., 1st Sess. 22–23; S. Rep. No. 3, 98th Cong., 1st Sess. 38 (1983).

copy of a foreign law may sometimes be difficult and is revising § 587.3(b)(4) to provide that certified copies of the law, rule, regulation or other document are to be provided "when available". The Commission believes, however, that the petitioning parties should *generally* be able to provide a concise description and citation of the foreign laws, rule, or government or commercial practice which is alleged to impair access to a trade. This information will obviously be essential to section 13(b)(5) deliberations.

Likewise, the Commission concludes that statistics relating to alleged harm required under § 587.3(b)(7)(i) and (b)(7)(iii), are necessary to make an informed decision regarding the merits of the petition and the harm alleged. The Commission will exercise its judgment when evaluating the statistics provided, including the particular circumstances surrounding each petition, and will consider the difficulties involved in obtaining and/or compiling these statistics.

In addition, affidavits of fact and memoranda of law provide needed information to enable the Commission to evaluate the merits of the petition and proceed expeditiously where swift action may be critical to prevent irreparable harm to the U.S.-flag carrier. Therefore, these documents remain a requirement for petition contents.

Section 587.3(b)(2)

Section 587.3(b)(2) of the Interim Rule requires that "the name and address of each party (carrier, person, or foreign government agency) against whom the petition is made" be included in the petition. DOT believes that this section should be amended to require "the name of each party (foreign government, agency or instrumentality thereof, carrier or other person) against whom the petition is made." DOT points out that addition of the language "foreign government, agency or instrumentality thereof", would enable a petitioner to name a quasi-governmental organization, such as a national commodity or cargo allocation authority, that is acting in concert with common carriers to unduly impair the access of a U.S.-flag vessel. The language, "carrier or other person" is intended to make § 587.3(b)(2) more consistent with the Act which defines "person" to, in effect, include a carrier. DOT's suggestion clarifies the definition of "party" and is, therefore, being adopted.

CENSA notes that § 587.3(b)(2) fails to require the petition to be served on the parties. The CENSA comment has merit and § 587.4(b) of the Final Rule (previously § 587.6(b)) provides for such service by the Commission. In cases where a foreign government, agency or instumentality thereof, is named as a party in the petition, the Commission will seek service through appropriate diplomatic channels. In order for the Commission to recognize, with certainty, whether a party named in a petition is a foreign government, agency or instrumentality thereof, it is requiring a statement to that affect under § 587.3(b)(2) of the Final Rule.

Section 587.3(b)(5)

Section 587.3(b)(5) of the Interim Rule requires that a petition include "any other evidence" of the existence of a government or commercial practice alleged to be causing undue impairment of access. Agreement No. 10050 has suggested that § 587.3(b)(5) be expanded to include other evidence relating to any "law, rule or regulation" as well as any "government or commercial practice". Agreement No. 10050 believes this change is appropriate because, as it noted in its comment on § 587.3(b)(4), a certified copy of foreign laws may not be obtainable. Although this section would probably allow for the inclusion of such information under either § 587.3(b)(3) or § 587.3(b)(7), the change suggested in § 587.3(b)(5) is being adopted to include "any other information relating to any law, rule, or regulation, or indicating the existence of any government or commercial practice."

One other change is being made to § 587.3(b)(5). The term "evidence" is being deleted and in its place the term "information" is being inserted. This change is made here and in any other section of the Final Rule where the term "evidence" is used. The contents of the petition cannot be properly characterized as "evidence" at this point in the section 13(b)(5) procedure.

Section 587.3(b)(8)

Section 587.3(b)(8) of the Interim Rule requires a memorandum of law addressing relevant legal issues. Agreement No. 10050 believes that it is not clear whether this provision contemplates submission of a separate document. It suggests that a change be made to indicate that any legal discussion, where appropriate, may be incorporated in the petition for relief. This suggestion is being adopted in the Final Rule. The Commission will permit the petitioner to submit a separate memorandum as part of the petition or, where appropriate, incorporate any legal discussion within the petition. Section 587.3(b)(8) is being amended accordingly.

Section 587.4. Receipt of relevant information.

(Redesignated Section 587.5 in the Final Rule)

CENSA suggests that information submitted to the Commission be made available to all interested parties. Agreement No. 10050 suggests that any information submitted pursuant to this section should be provided to the petitioning or affected U.S.-flag carrier before it is made part of the record. DOT recommends the establishment of standards for confidential treatment and procedures for segregating proprietary information from other factual statements and arguments in order to provide maximum disclosure of information.

Persons submitting information pursuant to § 587.5 of the Final Rule may request that all or any portion of that information be accorded confidential treatment under an appropriate exemption of the Freedom of Information Act (FOIA) (5 U.S.C. 552). Where an exemption applies, proprietary or other information would be protected from disclosure. The Commission does not believe it is necessary to specifically provide for confidential treatment of business or other information in Part 587.

It should be noted that any information which is submitted, even if covered by a FOIA exemption, must be disclosed to all parties in any proceeding under Part 587 if that information is made part of the record in the proceeding upon which the Commission will base its decision. Fundamental precepts of due process require that such information be made available to all parties in a proceeding. Where appropriate, such information may be shielded from public disclosure through a protective order. In any event, Commission action will be based on the record before it. Finally, there does not appear to be any need or reason for submitting information to a petitioning or affected U.S.-flag carrier prior to making the information a part of the public record.

Section 587.4(a)

(Redesignated Section 587.5(a) in the Final Rule)

DOT recommends that § 587.4(a) of the Interim Rule be modified to provide for both compulsory production of information in appropriate circumstances and express sanctions for failure to produce information, noting comparable provisions under the Commission's regulations implementing

section 19(l)(b) of the Merchant Marine Act of 1920.[6]

The Commission believes it unnecessary to make a specific reference in the Final Rule to the Commission's subpoena powers conferred by section 12 of the Shipping Act of 1984 (46 U.S.C. app. 1711). Nothing precludes the Commission from employing its subpoena powers in a section 13(b)(5) proceeding. Furthermore, the failure of affected parties to provide information may result in findings or conclusions that would be adverse to them.

Section 587.4(b)

(Redesignated section 587.5(b) in the Final Rule)

The phrase "*bona fide*" has been deleted from § 587.5(b) of the Final Rule. A petition which has been published in the **Federal Register** has in effect been determined to be *bona fide* and the phrase "*bona fide*" in this section is unnecessary.

Section 587.5. Notification to Secretary of State.

(Redesignated section 587.6 in the Final Rule)

Section 587.5 (now § 587.6 in the Final Rule) provides for notification to the Secretary of State by the Commission when there are indications that conditions unduly impairing the access of a U.S.-flag vessel to trade between foreign ports exist. The section provides that the Commission may request that the Secretary of State seek resolution of the matter through diplomatic channels and may request the Secretary to report the results of such efforts within a specified time period.

CENSA suggests that this section be amended to explicitly permit the Secretary of State to "concert" with friendly governments sharing the same aim of free access to trade, so that joint efforts may be made to seek a diplomatic solution. The CSG states that where resistance against restrictive trade practices is intended to be collective, the Commission should invariably request the Secretary of State to join in the pursuit of a diplomatic resolution to each problem.

COSCO suggests that in the event actions complained of are those of a controlled carrier or of a foreign government, the Final Rule should *require* the Commission to request that the Secretary of State seek diplomatic resolution and report to the Commission on those diplomatic efforts before a Commission proceeding begins.

These suggestions are not being adopted. The Commission would, of course, seek assistance from the State Department, where feasible and appropriate, and prefers, where possible, diplomatic resolution of matters raised in section 13(b)(5) petitions. However, in some cases, attempts to seek resolution through diplomatic channels may be time consuming and could result in a U.S.-flag carrier suffering irreparable harm. Commission requests that the Secretary of State seek diplomatic resolution of section 13(b)(5) matters will, therefore, be kept discretionary.

Delta seeks to clearly the Commission's enforcement role by modifying § 587.5 to clarify indicate that the Commission and not the Department of State is responsible for the enforcement of section 13(b)(5). Delta also suggests that an affected U.S.-flag carrier be kept apprised of the progress of any diplomatic negotiations undertaken by the Secretary of State.

The Shipping Act of 1984 unequivocally entrusts this Commission with the administration and enforcement of section 13(b)(5). We have no intention of abdicating those responsibilities in any way. The Commission is neither required to request assistance from the Secretary of State nor required to delay action pending a diplomatic resolution. As noted above, however, the diplomatic resolution of grievances presented in section 13(b)(5) matters would generally appear preferable to unilateral Commission action. The Commission may, of course, assist in these diplomatic efforts if requested.

We do not believe it necessary or appropriate to provide in the Final Rule that the U.S.-flag carrier or any other party will be apprised by the Commission of the progress of diplomatic negotiations. U.S-flag carriers or other parties can, of course, contact the Department of State with respect to the status of diplomatic negotiations.

The Department of Transportation suggests that § 587.5 be amended to provide that the Commission also notify the Secretary of Transportation and when appropriate consult with the Secretaries of State and Transportation on policy questions. The Interim Rule specifies notification to the Secretary of State because it is our understanding that the Department of State is the agency which would have the primary responsibility to seek diplomatic resolution of 13(b)(5) matters which will involve foreign laws and commercial practices existing in foreign-to-foreign trades. However, the Commission will, as in the past, consult with the Secretary of Transportation, who is the Administration's chief spokesperson for maritime policy, and with various other agencies of the Executive Branch in matters relevant to their areas of interest, and will keep them informed as requested. The Commission does not believe that DOT's proposal should be incorporated into the Final Rule, but rather that consultation with other agencies should be handled on an *ad hoc* basis.

NMC suggests that once a "proper" petition for relief has been filed, notification to the Secretary of State under § 587.5 should be provided within a specified number of days. As indicated in connection with § 587.3, the Commission requires maximum flexibility in structuring the procedures and cannot be locked into any pre-determined time frames. The Commission will act as expeditiously as possible in each instance.

Section 587.6. Hearing.

(Redesignated Section 587.4 in the Final Rule)

Section 587.6 (now § 587.4 in the Final Rule) provides for proceedings pursuant to section 13(b)(5). DOT believes that it is unclear whether the term "hearing" refers to oral argument or to the more general opportunity to be heard, either orally or in writing, on matters potentially affecting one's interests. DOT suggests that the title of the section be changed to "Procedure" or "Notice and Opportunity to be Heard" and that the word "proceedings" be substituted for the word "hearings" where it appears in this section.

Section 587.6 establishes a basic procedure of notice and opportunity to be heard in a section 13(b)(5) proceeding. Section 587.6(a) provides for the institution of a proceeding upon the filing of a meritorious petition or upon the Commission's own motion. Section 587.6(b) further provides that notice of any such proceeding will be published in the **Federal Register** and interested or affected persons will have an opportunity to reply to the petition. Section 587.6(c) provides that the Commission may issue a final determination after there has been notice and opportunity to be heard or it may order further hearing if warranted. Any further hearings ordered by the Commission will be structured on a case-by-case basis.

The meaning of the term "hearing" in § 587.6(c) would appear to be sufficiently clear and this term shall be retained. However, the title of this

[6] See 46 CFR Part 585 (formerly Part 506), as amended. 49 FR 20816 (May 17, 1984).

section shall be changed from "Hearing" to "Proceeding" in order to more accurately reflect the contents of this section which includes procedures other than hearing procedures. This section is also being amended to require that an original and 15 copies of replies be filed with the Secretary. Finally, section 587.6 has been redesignated as § 587.4. This placement provides for a more logical sequence in the Final Rule.

Section 587.6(b) of the Interim Rule is being amended to indicate that notice of the institution of a proceeding will be served on the parties by the Commission (section 587.4(b)(1) of the Final Rule). Additionally, this paragraph is being amended to note that replies to a petition by interested, or adversely affected parties will be sumbitted pursuant to § 587.5 of the Final Rule (previously § 587.4). This amendement is being made to clarify that § 587.5 of the Final Rule provides respondents or other interested parties the opportunity to reply to a petition by submitting information. In addition, a technical language modification is being made to § 587.6(b) of the Interim Rule regarding the form of factual submissions (section 587.4(b)(2) of the Final Rule).

Transnave suggests that special procedures be established in the Final Rule to provide for expedited evidentiary hearings and Commission decision within 120 days. It believes that the Final Rule should expressly guarantee the respondent the right to challenge information received by the Commission under § 587.5 (previously § 587.4). Similarly, CENSA expresses concern that the *ad hoc* hearing procedures satisfy the standards of due process and the Administrative Procedure Act (APA) (5 U.S.C. 553).

A formal procedural framework for consideration of petitions would not provide the necessary flexibility to address all the various circumstances under which an action for impairment of access might arise. In establishing the appropriate procedures for each case, the mandates of fundamental due process will, however, be observed and respondents will have an opportunity to confront petitioners' allegations. In certain situations the requirements of due process may be met by the filing of written submissions. In others, more formal procedures may be appropriate. Whatever procedures the Commission establishes, it will ensure that all procedures will satisfy the requirements of due process and, where applicable, the APA.

Section 587.6(b)

(Redesignated Section 587.4(b) in the Final Rule)

CENSA points out that § 587.6(b) of the Interim Rule appears to require that factual submissions of persons responding to a petition be supported by affidavits and sworn documents, but that it does not clearly make the same requirement for the submission of the petitioner's factual allegations. It is the Commission's intention that both the petitioner(s) and respondent(s) provide supporting affidavits and sworn documents. In addition to the requirement in § 587.4(b)(2) of the Final Rule, that factual submissions shall be in affidavit form, §§ 587.3(b) and 587.5(a) (previously § 587.4(a)) are being amended to make this clear.

CENSA suggests that actual notice of a proceeding should be given to affected parties. As mentioned above, such notice will be given by the Commission and § 587.4(b) of the Final Rule so provides.

Transnave submits that due process requires that affected parties be given not less than 30 days to reply to a petition. It is unlikely that the Commission would prescribe a period of less than 30 days for response to a petition, given the fact that certain responses might be based on information located outside of the United States and that certain documents might require English translations. The Commission, however, will consider the length of time needed to respond, as well as the likelihood that injury will result from a delay, on a case-by-case basis.

Agreement No. 10050 believes that procedural time frames are inadequately addressed in the Interim Rule and proposes that a new provision be added which states that prompt response and expeditious action may be required in any given case. NMC suggests the imposition of specific deadlines for completion of the various procedural stages of a section 13(b)(5) proceeding.

As noted earlier in discussing comments on § 587.3, because of the possible complexity and significant foreign policy considerations underlying section 13(b)(5) petitions, the Commission requires maximum flexibility in structuring appropriate proceedings and formulating the necessary time frames. The Commission will, therefore, not attempt to prescribe procedural deadlines in its Final Rule.

Section 587.7. Decisions; sanctions; effective date.

Section 587.7 (a) and (b)

COSCO suggests that prior to the imposition of sanctions, the Commission take into consideration the fault of the person against whom the sanction would be imposed and the effect of such sanctions on the trade. In resolving a section 13(b)(5) petition, the Commission intends, as the law requires it to do, to consider the complete record and make an informed decision based on all the facts, taking into account all the ramifications of its decision such as those raised by COSCO.

Section 587.7(b)

CENSA suggests that § 587.7(b) should be amended to provide that sanctions based on the restrictive trade practices of a foreign government will be imposed only against that government or a carrier of that government. COSCO notes that it is inappropriate for the Commission to impose sanctions against a carrier which is acting in compliance with the laws of a foreign government. The Commission cannot limit itself with respect to the nationality of a carrier on which sanctions may be imposed. In each case brought before the Commission, the role that a government plays in unduly impairing the access of a U.S.-flag carrier, as well as the role of the national-flag lines of that government and other carriers, will be considered. Whatever sanctions might be imposed by the Commission will be against those parties which are either directly or indirectly responsible for undue impairment of access of a U.S.-flag vessel.

Section 587.7(c)

(Redesignated Section 587.7(d) in the Final Rule)

Section 587.7(c) of the Interim Rule provides for the publication and effective date of a Commission decision. CENSA suggests that all parties should be served with a decision. It is the intention of the Commission to serve the decision on all parties and § 587.7(a) is being amended to make this clear.

CENSA suggests that all decisions should be published in the Federal Register. The Commission agrees with this suggestion and § 587.7(d) of the Final Rule is so amended.

CENSA believes it is improper to set the effective date of a Commission action under section 13(b)(5) prior to Presidential review. As previously discussed, the Executive Branch will have ample opportunity to comment on section 13(b)(5) petitions and participate

in section 13(b)(5) proceedings, if it desires. Moreover, the Commission has already established procedures for advising, and consulting with, the Department of State, prior to the issuance of any final order. In no event will the Commission establish an effective date of less than 10 days from the date an order is issued. This should provide the President time to review a decision of the Commission issued under section 13(b)(5). It would neither be appropriate nor fair to any affected carrier to allow the Presidential review period to delay publication of an effective date.

Agreement No. 10050 and Delta believe that 30 days is too lengthy a time period between publication of the Commission decision and its effective date. The Commission believes that a 30 day notice period would generally be appropriate and necessary, given the international ramifications of a section 13(b)(5) action. However, because there may be circumstances and situations requiring more expedited action, § 587.7(d)(2) of the Final Rule allows the Commission, "for good cause", to prescribe an effective date of less than 30 days.

Section 587.7(e)

A new procedure has been added to § 587.7 which provides that any party may file a petition for reconsideration of any final decision under this part. Section 587.7(e) further provides for service of the petition upon all parties and states that the petition does not in itself stay the effective date of Commission action.

Section 587.8. Submission of orders to the President.

Sections 587.7, 587.8, and 587.9

DOT suggests that §§ 587.7, 587.8 and 587.9 be modified to allow the President a reasonable opportunity to classify the Commission's decision for national security reasons and thereby withhold it from publication in appropriate circumstances. We do not agree. Any potentially sensitive issue involving national defense or national security surrounding a section 13(b)(5) case or its outcome, can be expected to be brought to the Commission's attention by the Executive Branch well prior to a Commission decision. In addition, § 587.8 procedures are consistent with those established in section 9 of the Act (46 U.S.C. app. 1708), which provides for the publication of a Commission order of "suspension or final order of disapproval of rates, charges . . . of a controlled carrier . . .", concurrent with submission of the order for Presidential review. Similarly, as in any section 13(b)(5) order, the President may stay the effect of the Commission's order for reasons of national defense or foreign policy. Therefore, the Commission will not withhold a section 13(b)(5) decision pending Presidential review.

Section 587.8

The Interim Rule provided that a decision imposing sanctions would be transmitted to the President concurrently with the submission of the decision for publication in the **Federal Register.** CENSA believes that *all* decisions, including those that do not impose sanctions, should be submitted immediately to the President. We see no reason to submit decisions to the President which do not impose sanctions. If no action is being taken there is no reason to involve the President. CENSA's suggestion, therefore, is not adopted.

To clarify the term "decision", this section is being amended in the Final Rule to refer to "any decision imposing sanctions." In certain situations where impairment of access may be "imminent", the Commission may wish to issue two decisions. The first decision would be a notice of intent to impose sanctions should the action threatening the impairment of access occur. This decision would be followed by a second notice imposing sanctions when the action impairing access actually takes place. In such a situation, both decisions would be transmitted to the President. Alternatively, the Commission could, in its discretion, issue a single decision, to be served on the President, imposing sanctions at the time the action impairing access actually occurs.

Conforming changes have been made throughout the Rule to accommodate this change. Reference to "final" determinations or decisions have, therefore, been dropped. A "decision" however must pertain to a substantive finding or conclusion as distinguished from a procedural ruling.

Section 587.9. Postponement, discontinuance or suspension of action.

Section 587.9 provides that the Commission may, on its own motion, upon petition or by order of the President, postpone, discontinue or suspend any or all actions taken by it under the provisions of this part. Agreement No. 10050 suggests that this section state that the filing of a petition does not stay the effective date of a Commission action except upon compelling showing. As with petitions for reconsideration under new § 587.7(e), the filing of a petition to postpone, discontinue or suspend would not, in and of itself, stay the effective date of that action. Section 587.9 of the Interim Rule is being amended to make this clear. In addition, § 587.9 has been reorganized in order to clarify the distinction between discretionary and mandatory postponements. Finally, some editorial changes have been made in the language of this section.

The Commission has carefully considered all comments submitted to the Interim Rule and as discussed above, has made a number of changes to accommodate valid suggestions therein. Other non-substantive technical or style changes have been made and not expressly discussed. Any comments not expressly mentioned herein, nevertheless have been considered and found to be without merit, unwarranted, or unnecessary.

The Chairman of the Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that the Final Rule published herein will not have a significant economic impact on a substantial number of small entities, within the meaning of that Act. The primary economic impact of the Final Rule would effect common carriers by water, which generally are not small entities. A secondary impact may fall on shippers, some of which may be small entities, but that impact is not considered to be significant.

List of Subjects in 46 CFR Parts 585 and 587

Foreign relations, Foreign trade, Maritime carriers; Rates and fares.

Therefore, pursuant to 5 U.S.C. 553; section 19(1)(b) of the Merchant Marine Act, 1920 (46 U.S.C. app. 876(1)(b)); sections 13(b) (5), 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712(b)(5), 1714 and 1716); and Reorganization Plan No. 7 of 1961 (75 Stat. 840) Parts 585 and 587 of Title 46, Code of Federal Regulations are revised to read as follows:

PART 585–REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

Sec.

585.1 Purpose.
585.2 Scope.
585.3 Findings—Conditions unfavorable to shipping in the foreign trade of the United States.
585.4 Petitions for section 19 relief—General—Who may file.
585.5 Petitions—How filed.
585.6 Petitions—Contents.
585.7 Petitions—Amendment or dismissal of.

Sec.

585.8 Initial action to meet apparent conditions unfavorable—Resolution through diplomatic channels.
585.9 Actions to meet conditions unfavorable to shipping in the foreign trade of the United States.
585.10 Participation of interested persons.
585.11 Production of information.
585.12 Production of information—Failure to produce.
585.13 Postponement, discontinuance, or suspension of action.
585.14 Content and effective date of regulation.

Authority: 5 U.S.C. 553; sec. 19 (l) (b) of the Merchant Marine Act, 1920 (46 U.S.C. app. 876(l) (b)); secs. 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1714 and 1716); and Reorganization Plan No. 7 of 1961 (75 Stat. 840).

§ 585.1 Purpose.

It is the purpose of the regulations of this part to declare certain conditions resulting from governmental actions by foreign nations or from the competitive methods or practices of owners, operators, agents, or masters of vessels of a foreign country unfavorable to shipping in the foreign trade of the United States and to establish procedures by which persons who are or can reasonably expect to be adversely affected by such conditions may petition the Federal Maritime Commission for the issuance of regulations under the authority of section 19 of the Merchant Marine Act of 1920. It is the further purpose of the regulations of this part to afford notice of the general circumstances under which the authority granted to the Commission under section 19 may be invoked and the nature of the regulatory actions contemplated.

§ 585.2 Scope.

Regulatory actions may be taken when the Commission finds, on its own motion or upon petition, that a foreign government has promulgated and enforced or intends to enforce laws, decrees, regulations or the like, or has engaged in or intends to engage in practices which presently have or prospectively could create conditions unfavorable to shipping in the foreign trade of the United States, or when owners, operators, agents or masters of foreign vessels engage in or intend to engage in, competitive methods or practices which have created or could create such conditions.

§ 585.3 Findings—Conditions unfavorable to shipping in the foreign trade of the United States.

For the purposes of this part, conditions created by foreign governmental action or competitive methods of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, or if such conditions:

(a) Impose upon vessels in the foreign trade of the United States fees, charges, requirements, or restrictions different from those imposed on other vessels competing in the trade, or which preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel;

(b) Reserve substantial cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States;

(c) Are otherwise unfavorable to shipping in the foreign trade of the United States;

(d) Are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors and which cannot be justified under generally-accepted international agreements or practices and which operate to the detriment of the foreign commerce or the public interest of the United States.

§ 585.4 Petitions for section 19 relief—General—Who may file.

Any person, including, but not limited to, any importer, exporter, shipper, consignee, or owner, operator or charterer of a liner, bulk, or tramp vessel, who has been harmed by, or who can reasonably expect harm from existing or impending conditions unfavorable to shipping in the foreign trade of the United States, may file a petition for the relief under the provisions of this part.

§ 585.5 Petitions—How filed.

All requests for relief from conditions unfavorable to shipping in the foreign trade shall be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part shall be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

§ 585.6 Petitions—Contents.

Petitions for relief from conditions unfavorable to shipping in the foreign trade of the United States shall set forth the following:

(a) A concise description and citation of the foreign law, rule, regulation, practice or competitive method complained of;

(b) A certified copy of any law, rule, regulation or other document involved and, if not English, a certified English translation thereof;

(c) Any other evidence of the existence of such practice or competitive method;

(d) A clear description, in detail, of the harm already caused or which may reasonably be expected to be caused petitioner, including:

(1) Statistics for the representative period showing a present or prospective cargo loss if harm is alleged on that basis. Such statistics shall include figures for the total cargo carried or projected in the trade for the period;

(2) Statistics or other evidence for the representative period showing increased costs, inferior services or other harm to cargo interest if injury is claimed on that basis; and

(3) A statement as to why the period is representative.

(e) A recommended regulation, the promulgation of which will, in view of the petitioner, adjust or meet the alleged conditions unfavorable to shipping in the foreign trade of the United States.

§ 585.7 Petitions—Amendment or dismissal of.

Upon the failure of a petitioner to comply with the provisions of this part, the petitioner will be notified by the Secretary and afforded reasonable opportunity to amend its petition. Failure to timely amend the petition will result in its dismissal. For good cause shown additional time for amendment may be granted.

§ 585.8 Initial action to meet apparent conditions unfavorable—Resolution through diplomatic channels.

Upon the filing of a petition, or on its own motion when there are indications that conditions unfavorable to shipping in the foreign trade of the United States may exist, the Commission will notify the Secretary of State that such conditions apparently exist, and may request he or she seek resolution of the matter through diplomatic channels. If request is made, the Commission will give every assistance in such efforts, and the Commission may request the Secretary to report the results of his or her efforts at a specified time.

§ 585.9 Actions to meet conditions unfavorable to shipping in the foreign trade of the United States.

Upon a submission of a petition filed under the rules of this part, or upon its own motion, the Commission may find that conditions unfavorable to shipping in the foreign trade of the United States do exists, and may, without further proceeding, issue regulations. Such regulations may effect the following:

(a) Imposition of equalizing fees or chargers;

(b) Limitation of sailings to and from United States ports or of amount or type of cargo during a specified period;

(c) Suspension, in whole or in part, of any or all tariffs filed with the Commission for carriage to or from United States ports; and

(d) Any other action the Commission finds necessary and appropriate in the public interest to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

§ 585.10 Participation of interested persons.

In the event that participation of interested persons is deemed necessary by the Commission, notice will be published in the **Federal Register** and interested persons will then be allowed to participate in this procedure by the submission of written data, views or arguments, with or without opportunity to present same orally.

§ 585.11 Production of information.

In order to aid in the determination of whether conditions unfavorable to shipping in the foreign trade of the United States exists, or in order to aid in the formulation of appropriate regulations subsequent to a finding that conditions unfavorable to shipping in the foreign trade of the United States exist, the Commission may, when it deems necessary or appropriate, and without further proceedings, order any owner, operator, or charterer in the affected trade to furnish any or all of the following information:

(a) Statistics for a representative period showing cargo carried to and from the United States in the affected trade on vessels owned, operated or chartered by it by type, source, value, and directions.

(b) Information for a representative period on the activities of vessels owned, operated, or chartered, which shall include sailings to and from United States ports, costs incurred, taxes or other charges paid to authorities, and subsidies or other payments received from foreign authorities; and such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

(c) Information for a specified future period on the prospective activities of vessels which it owns, operates or charters or plans to own, operate or charter, to and from United States ports, which shall include projected sailings, anticipated costs, taxes or other charges to be paid to authorities, and expected subsidies or other payments to be received from foreign authorities; and such other information that the Commission considers relevant to discovering or determining the existence of general or special conditions unfavorable to shipping in the foreign trade of the United States.

§ 585.12 Production of information—Failure to produce.

The Commission may, when there is a failure to produce any information ordered produced under § 585.11, make appropriate findings of fact or deem such a failure to produce as an admission that conditions unfavorable to shipping in the foreign trade of the United States do exist.

§ 585.13 Postponement, discontinuance, or suspension of action.

The Commission may, on its own motion or upon petition postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall postpone or discontinue any or all such actions if the President forms the Commission that postponement, discontinuance, or suspension is required for reasons of foreign policy or national security.

§ 585.14 Content and effective date of regulation.

The Commission shall incorporate in any regulations adopted under the rules of this part a concise statement of their basis and purpose. Regulations shall be published in the **Federal Register.** Except where conditions warrant and for good cause, regulations promugated under the rules of this part shall not become effective until 30 days after the date of publication.

Note.—In accordance with 44 U.S.C. 3506(c)(5), any information request or requirement in this part is not subject to the requirements of section 3507(f) of the Paperwork Reduction Act, because there are nine or fewer respondents.

PART 587—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

Sec.

587.1 Purpose; general provisions.
587.2 Factors indicating conditions unduly impairing access.
587.3 Petitions for relief.
587.4 Proceeding.
587.5 Receipt of relevant information.
587.6 Notification to Secretary of State.
587.7 Decision; sanctions; effective date.
587.8 Submission of decision to the President.
587.9 Postponement, discontinuance, or suspension of action.

Authority: 5 U.S.C. 553; secs. 13(b)(5), 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712(b)(5), 1714, and 1716).

§ 587.1 Purpose; general provisions.

(a)(1) It is the purpose of this part to enumerate certain conditions resulting from the action of a common carrier, acting alone or in concert with any person, or a foreign government, which unduly impair the access of a vessel documented under the laws of the United States whether liner, bulk, tramp or other vessel, (hereinafter "U.S.-flag vessel") to ocean trade between foreign ports, which includes intermodal movements, and to establish procedures by which the owner or operator of a U.S.-flag vessel hereinafter "U.S.-flag carrier") may petition the Federal Maritime Commission for relief under the authority of section 13(b)(5) of the Shipping Act of 1984 ("the Act") [46 U.S.C. app. 1712(b)(5)].

(2) It is the further purpose of this part to indicate the general circumstances under which the authority granted to the Commission under section 13(b)(5) may be invoked, and the nature of the subsequent actions contemplated by the Commission.

(3) This part also furthers the goals of the Act with respect to encouraging the development of an economically sound and efficient U.S.-flag liner fleet as stated in section 2 of the Act (46 U.S.C. app. 1701).

(b)(1) This part implements the statutory notice and hearing requirement and ensures that due process is afforded to all affected parties. At the same time, it allows for flexibility in structuring proceedings so that the Commission may act expeditiously whenever harm to a U.S.-flag carrier resulting from impaired access to cross trades has been demonstrated or is imminent.

(2) The provisions of Part 502 of this chapter (Rules of Practice and Procedure) shall not apply to this part except for those provisions governing *ex parte* contacts (§ 502.11 of this chapter) and except as the Commission may otherwise determine by order.

(c) The condition of unduly impaired access will be found only where a U.S.-flag carrier is commercially able to enter a trade in which its access is being unduly impaired, or is reasonably expected to be impaired, or where actual participation in a trade by a U.S.-flag carrier is being restricted for reasons other than its commercial ability or competitiveness.

(d) In examining conditions in a trade between foreign ports, and in considering appropriate action, the Commission will give due regard to U.S. maritime policy and U.S. Government shipping arrangements with other nations, as well as the degree of reciprocal access afforded in U.S. foreign trades to the carriers of the countries against whom Commission action is contemplated.

§ 587.2 Factors indicating conditions unduly impairing access.

For the purpose of this part, factors which would indicate the existence of conditions created by foreign government action or action of a common carrier acting alone or in concert with any person, which unduly impair access of a U.S.-flag vessel engaged in or seeking access to ocean trade between foreign ports, include, but are not limited to:

(a) Imposition upon U.S.-flag vessels or upon shippers or consignees using such vessels, of fees, charges, requirements, or restrictions different from those imposed on national-flag or other vessels, or which preclude or tend to preclude U.S.-flag vessels from competing in the trade on the same basis as any other vessel.

(b) Reservation of a substantial portion of the total cargo in the trade to national-flag or other vessels which results in failure to provide reasonable competitive access to cargoes by U.S.-flag vessels.

(c) Use of predatory practices, possibly including but not limited to closed conferences employing fighting ships or deferred rebates, which unduly impair access of a U.S.-flag vessel to the trade.

(d) Any government or commercial practice that results in, or may result in, unequal and unfair opportunity for U.S.-flag vessel access to port or intermodal facilities or services related to the carriage of cargo inland to or from ports in the trade.

(e) Any other practice which unduly impairs access of a U.S.-flag vessel to trade between foreign ports.

§ 587.3 Petitions for relief.

(a) *Filing.* (1) Any owner or operator of a liner, bulk, tramp or other vessel documented under the laws of the United States who believes that its access to ocean trade between foreign ports has been, or will be, unduly impaired may file a written petition for relief under the provisions of this part.

(2) An original and fifteen copies of such a petition including any supporting documents shall be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

(b) *Contents.* Petitions for relief shall include the following and shall also include an affidavit attesting to the truth and accuracy of the information submitted:

(1) The name and address of the petitioner;

(2) The name and address of each party (foreign government, agency or instrumentality thereof, carrier, or other person) against whom the petition is made and a statement as to whether the party is a foreign government, agency or instrumentality thereof;

(3) A concise description and citation of the foreign law, rule or government or commercial practice complained of;

(4) A certified copy of any law, rule, regulation or other document concerned, when available and, if not in English, a certified English translation thereof;

(5) Any other information relating to any law, rule or regulation, or indicating the existence of any government or commerical practice;

(6) A description of the service offered or proposed, as a result of which petitioner is alleging harm, including information which indicates the ability of the petitioner to otherwise participate in the trade;

(7) A clear description, in detail, of the harm already caused, or which may reasonably be expected to be caused, to the petitioner for a representative period, including:

(i) Statistics documenting present or prospective cargo loss due to discriminatory government or commercial practices if harm is alleged on that basis; such statistics shall include figures for the total cargo carried or projected to be carried by petitioner in the trade for the period, and the sources of the statistics;

(ii) Information documenting how the petitioner is being prevented from entering a trade, if injury is claimed on that basis;

(iii) statistics or other information documenting the impact of discriminatory government or commercial practices resulting in an increase in costs, service restrictions, or other harm on the basis of which injury is claimed, and the sources of the statistics; and

(iv) A statement as to why the period is representative.

(8) A separate memorandum of law or a discussion of the relevant legal issues.

(9) A recommended action, rule or regulation, the result of which will, in the view of the petitioner, address the alleged conditions unduly impairing the access of petitioner to the affected trade.

(c) *Deficient petition.* A petition which substantially fails to comply with the requirements of paragraph (b) of this section shall be rejected and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to filing of an amended petition.

§ 587.4 Proceeding.

(a) Upon the Commission's own motion or upon the filing of a petition which meets the requirements of § 587.3, when there are indications that conditions unduly imparing the access of a U.S.-flag vessel to trade between foreign ports may exist, the Commission will institute a proceeding pursuant to this part.

(b)(1) Notice of the institution of any such proceeding will be published in the **Federal Register**, and that notice and petition, if any, will be served on the parties.

(2) Interested or adversely affected persons will be allowed a period of time to reply to the petition by the submission of written data, views or legal arguments pursuant to § 587.5 of this part. Factual submissions shall be in affidavit form.

(3) An original and 15 copies of such submissions will be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573.

(c) Following the close of the initial response period, the Commission may issue a decision or order further hearings if warranted. If further hearings are ordered, they will be conducted pursuant to procedures to be outlined by the Commission in its order.

§ 587.5 Receipt of relevant information

(a) In making its decision on matters arising under section 13(b)(5) of the Act, the Commission may receive and consider relevant information from any owner, operator, or conference in an affected trade, or from any foreign government, either directly or through the Department of State or from any other reliable source. All such submissions should be supported by affidavits of fact and memorandum of law. Relevant information may include, but is not limited to:

(1) Statistics, with sources, or, if unavailable, the best estimates pertaining to:

(i) The total cargo carried in the affected liner or bulk trade by type, source, value, tonnage and direction.

(ii) Cargo carried in the affected trade on vessels owned or operated by any person or conference, by type, source, value, tonnage and direction.

(iii) The percentage such cargo carried is of the total affected liner or bulk trade, on a tonnage and value basis.

(iv) The amount of cargo reserved by a foreign government for national-flag or other vessels in the affected trade, on a tonnage and value basis, and a listing of the types of cargo and specific commodities which are reserved for national-flag or other vessels.

(2) Information on the operations of vessels of any party serving the affected trade, including sailings to and from ports in the trade, taxes or other charges paid to foreign authorities, and subsidies or other payments received from foreign authorities.

(3) Information clarifiying the meaning of the foreign law, rule, regulation or practice complained of, and a description of its implementation.

(4) Complete copies of all conference and other agreements, including amendments and related documents, which apply in the trade.

(b) Once introduced or adduced, information of the character described in paragraph (a) of this section, and petitions and responses thereto, shall be made part of the record for decision and may provide the basis for Commission findings of fact and conclusions of law, and for the imposition of sanctions under the Act and this part.

§ 587.6 Notification to Secretary of State.

When there are indications that conditions unduly impairing the access of a U.S.-flag vessel to trade between foreign ports may exist, the Commission shall so notify the Secretary of State and may request that the Secretary of State seek resolution of the matter through diplomatic channels. If request is made, the Commission will give every assistance in such efforts, and the Commission may request the Secretary to report the results of such efforts within a specified time period.

§ 587.7 Decision; sanctions; effective date.

(a) Upon completion of any proceeding conducted under this part, the Commission will issue and serve a decision on all parties.

(b) If the Commission finds that conditions unduly impairing access of a U.S.-flag vessel to ocean trade between foreign ports exist, any of the following actions may be taken:

(1) Imposition of equalizing fees or charges applied in the foreign trade of the United States;

(2) Limitation of sailings to and from United States ports, or of amount or type of cargo carried, during a specified period;

(3)(i) Suspension, in whole or in part, of any or all tariffs filed with the Commission for carriage to or from United States ports, including the carrier's right to use any or all tariffs of conferences in U.S. trades of which it is a member for any period the Commission specifies, or until such time as unimpaired access is secured for U.S.-flag carriers in the affected trade.

(ii) Acceptance or handling of cargo for carriage under a tariff that has been suspended, or after a common carrier's right to utilize that tariff has been suspended pursuant to this part, will subject a carrier to the imposition of a civil penalty as provided under the Act (46 U.S.C. app. 1712(b)(3)) of not more than $50,000 per shipment; and

(4) Any other action the Commission finds necessary and appropriate to address conditions unduly impairing access of a U.S.-flag vessel to trade between foreign ports.

(c) If the Commission finds that conditions impairing access of a U.S.-flag vessel to ocean trade between foreign ports has not yet occurred, and punitive sanctions are warranted, such sanctions will be imposed to become effective simultaneously with the implementation of the action that would unduly impair the access of a U.S.-flag vessel.

(d)(1) All decisions will be published in the **Federal Register**.

(2) Decisions imposing sanctions, except where conditions warrant and for good cause, will become effective 30 days after the date of publication.

(e) Any party may file a petition to reconsider any decision under this part. Such a petition shall be served on all other parties to the proceeding and shall not, in and of itself, stay the effective date of the Commission action.

§ 587.8 Submission of decision to the President.

Concurrently with the submission of any decision imposing sanctions to the **Federal Register** pursuant to § 587.7(d)(1), the Commission shall transmit that decision to the President of the United States who may, within ten days after receiving the decision, disapprove it if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

§ 587.9 Postponement, discontinuance, or suspension of action.

(a) The Commission may, on its own motion or upon a petition, postpone, discontinue, or suspend any action taken by it under the provisions of this part. Such a petition will be served on all other parties and will not, in and of itself, stay the effective date of Commission action.

(b) The Commission shall postpone, discontinue or suspend any action provided for in its final decision if so directed by the President for reasons of national defense or foreign policy of the United States as provided in § 587.8.

Note.—In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information request or requirement in this part is not subject to the requirements of section 3507(f) of the Paperwork Reduction Act because such collection of information is pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

By the Commission.

Francis C. Hurney,

Secretary.

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