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Federal Register

Friday
February 1, 1985

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Federal Communications Commission
Veterans Administration

Aviation Safety
Federal Aviation Administration

Color Additives
Food and Drug Administration

Communications Equipment
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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 5295 of January 29, 1985

American Heart Month, 1985

By the President of the United States of America

A Proclamation

Despite progress in many areas, cardiovascular disease remains this Nation's number one cause of death. The sad fact is that more than 40 million Americans have one or more forms of heart or blood vessel disease. Strokes afflict almost two million people annually. As many as 1.5 million persons will have a heart attack this year, and approximately 550,000 of them will die. In all, diseases of the heart and blood vessels will take the lives of almost one million of our fellow citizens—some of whom may be our family members, our friends and our co-workers.

Almost as many people will die from cardiovascular disease during 1985 as from cancer, accidents, and all other causes combined. Economic losses will also run high. This Nation will spend an estimated $72 billion in 1985 for medical treatment, lost salaries, rehiring and training, and insurance and disability claims resulting from heart and blood vessel disease.

The American Heart Association, a not-for-profit volunteer health agency, and the Federal government, primarily through the National Heart, Lung and Blood Institute, are providing hope. In 1948, those two organizations joined forces to seek ways to reduce early death and disability from heart disease, stroke, and related disorders. Since then, much has been accomplished through research, professional and public education, and community service programs.

We have learned, for example, that maintaining proper nutrition, not smoking, and controlling high blood pressure can make a significant difference in the rate of incidence of these diseases. As a result, the death rates for heart attacks and strokes are much lower today than they were in 1948.

Even more progress should result from efforts by the Federal government and the American Heart Association to make everyone more aware of the dangers of smoking. Tougher labeling laws for cigarette packaging and advertising enacted last year by Congress will help. Research projects, such as the Coronary Primary Prevention Trials concluded in 1984, have given new impetus to the American Heart Association's longstanding finding that control of blood cholesterol decreases risk for heart attacks and strokes. The American Heart Association has taken major steps to inform the public about the significance of those test results, to influence Americans to adopt a prudent diet, and to encourage the efforts of scientists who are unlocking the mysteries of heart and blood vessel diseases.

Recognizing the need for all Americans to help in the continuing battle against cardiovascular disease, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b), has requested the President to issue annually a proclamation designating February as American Heart Month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of February 1985 as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, the officials of other areas subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to the resolution of the nationwide problem of cardiovascular disease.

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

Ronald Reagan

[FR Doc. 85-2746
Filed 1-30-85; 12:16 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5296 of January 29, 1985

National Day of Prayer, 1985

By the President of the United States of America

A Proclamation

The history of the American Nation is one of conviction in the face of tyranny, courage in the midst of turmoil and faith despite the roils of doubt and defeatism. Throughout our 208 years of freedom, the people of the United States have drawn upon the lessons learned at the dawn of our liberty by acting "with a firm reliance on Divine Providence" and expressing gratitude for the many blessings a loving God has showered upon us.

These lessons have not been learned and honored without difficulty. During the Revolutionary War, the Continental Congress proclaimed a National Day of Prayer each year for eight years, a practice that ended with the winning of the peace in 1783. Decades later, while the Civil War raged, this observance was renewed by Abraham Lincoln. Responding to a Senate Resolution requesting the President to designate and set apart a day for prayer and humiliation, Lincoln said that "intoxicated with unbroken success, we have become too self-sufficient to feel the necessity of redeeming and preserving grace, too proud to pray to the God that made us." He then called the Nation to prayer.

Our very existence as a free Nation, then, has provided potent witness to the efficacy of prayer. Grover Cleveland, in his First Inaugural Address, said, "Above all, I know that there is a Supreme Being who rules the affairs of men and whose goodness and mercy have always followed the American people, and I know He will not turn from us now if we humbly and reverently seek His powerful aid." Franklin D. Roosevelt, in his Fourth Inaugural Address, expressed the same thought, "The Almighty God has blessed our land in many ways. . . So we pray to Him now for the vision to see our way clearly—to see the way that leads to a better life for ourselves and for all our fellow men—to the achievement of His will, to peace on earth."

Today our Nation is at peace and is enjoying prosperity, but our need for prayer is even greater. We can give thanks to God for the ever-increasing abundance He has bestowed on us, and we can remember all those in our society who are in need of help, whether it be material assistance in the form of charity or simply a friendly word of encouragement. We are all God's handiwork, and it is appropriate for us as individuals and as a Nation to call to Him in prayer.

By joint resolution of the Congress approved April 17, 1952, the recognition of a particular day set aside each year as a National Day of Prayer has become a cherished national tradition. Since that time, every President has proclaimed an annual National Day of Prayer, resuming the tradition begun by the Continental Congress.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim May 2, 1985, as a National Day of Prayer. I call upon the citizens of this great Nation to gather together on that day in homes and places of worship to pray, each after his or her own manner, for unity of the hearts of all mankind.

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

Ronald Reagan

[FR Doc. 85-2747
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Rules and Regulations

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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

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 84-367]

Overtime Work at Border Ports, Ocean Ports, and Airports

Correction

In FR Doc. 85-508, beginning on page 721 in the issue of Monday, January 7, 1985, make the following correction:

§ 354.1 [Corrected]

On page 722, first column, in § 354.1(a)(1), in the seventh line "Title 49" should read "Title 9".

BILLING CODE 1505-01-M

Federal Crop Insurance Corporation

7 CFR Part 443

[Amdt. No. 1; Doc. No. 1818S]

Hybrid Seed Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), effective for the 1985 and succeeding crop years, by making several changes in the policy for insuring hybrid seed grown under contract relative to changing the dates found in the policy; providing for a germination test when necessary; clarifying production to count; prohibiting overinsuring; adding definitions of certain terms; deleting Appendix A; and other minor changes in language and format. The intended effect of this rule is to clarify and improve several sections of the policy for insuring hybrid seed. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: March 4, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes to language and format, the principal changes contained in the policy for insuring hybrid seed are:

1. Sections 1.a.—Add the failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This was added to clarify intent since it appears as an implied cause of loss in Section 2.e.(2).

2. Section 1.b.(5) and 7.d—Delete the present date of October 20 and provide for placing the date in the Actuarial Table. This will allow FCIC to set dates according to area.

3. Section 1.b.—Add a provision requiring a germination test before insuring against inadequate germination.

4. Section 4.b.—Change to allow a determination of yield in the event of a loss. The producer usually does not know what yield can be expected from the pedigree of the corn. At the time of application the producer elects a coverage level and dollar amount of insurance per acre. Yield usually cannot be determined before harvest.

5. Section 5.a.—Remove the Premium Adjustment Table. The crop will be insured on an average yield basis for the type and variety. Coverages will therefore reflect the actual production history of the crop. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

6. Section 5.c.—Remove the provisions for transfers of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these sections.

7. Section 8(2)—Add a provision for FCIC to make an inspection and germination test when necessary.

8. Section. 9.c. and e.—Specify that corn which tests 80 percent or more germination warm test will be considered as seed production to count in determining indemnies.

9. Section 9.c.—Change to clarify the use of seed production and non-seed production in indemnity calculation.

10. Section 9.d.—Effective for the 1986 crop year allow the guarantee only on

the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share, or practice reported results in a premium less than the acreage, share, or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce indemnities when acres are underreported and will reduce the complexity of calculations.

11. Section 9.e.—Change to clarify the use of seed production and non-seed production in determining production to count.

12. Section 9.j.—Expand the computation used to determine the indemnity when other fire insurance is obtained to include indemnities due when other insurance is obtained against other causes of loss. This change will reduce the possibility of fraud by eliminating the ability to overinsure the value of the crop.

13. Section 17.b, g, and l—Add definitions for "Commercial Seed," "Initially Planted," and "Seed Company."

14. In addition to the policy changes, FCIC also proposes to eliminate the codification of Appendix A. Federal crop insurance for hybrid seed has been expanded into almost all counties where hybrid seed is produced. FCIC service offices will be able to advise a producer if hybrid seed insurance is offered in a county.

Because of the number of changes and the necessity of renumbering sections, FCIC republishes the hybrid seed crop insurance policy in its entirety.

The public was invited to submit written comments, data, and opinions on the proposed rule. One response was received from the American Seed Trade Association (ASTA) and one from the National Association of Crop Insurance Agent (NACIA). The response by ASTA made five specific recommendations, two of which relate to the notice of proposed rulemaking as published. ASTA and NACIA recommended that FCIC increase the germination warm test percentage requirement found in section 9.e.(1)(a)(ii) of the policy from 80 percent to 90 percent. FCIC's limit of seed production to count is presently established as that seed with a germination warm test of 80 percent or higher. FCIC's position is that industry standards vary with the available supply of seed; however, ASTA feels that the standard of 80 percent is too low. FCIC is unable to change this percentage for the 1985 crop year, but agrees to review the matter for possible inclusion in the 1986 and succeeding crop years.

ASTA recommended that FCIC also increase the level of coverage from $400 to $500 in 1985. While this data is not included in the notice of proposed rulemaking, it is part of the actuarial data and is referred to in sections 2.a.(4) and 4.a, c, and d of the policy. FCIC is of the opinion that $400 coverage level in 1985, applicable in areas where hybrid seed crop insurance is offered, is adequate and corresponds to a maximum coverage in field corn of 140 bushels which would require an average yeild of 187 bushels. For this reason, FCIC, while not increasing such coverage for the 1985 crop year, will consider this matter for the 1986 and succeeding crop years.

The remaining recommendations relative to hybrid seed crop insurance from ASTA will be reviewed for the 1986 and succeeding crop years.

List of Subjects in 7 CFR Part 443

Crop insurance, Hybrid seed.

PART 443—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), effective for the 1985 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 443 is:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 443.1 is revised to read:

§ 443.1 Availability of hybrid seed crop insurance.

Insurance shall be offered under the provisions of this subpart on hybrid seed in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

3. 7 CFR 443.4 is revised to read:

§ 443.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

4. 7 CFR 443.6 is revised to read as follows:

§ 443.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the hybrid seed crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

5. 7 CFR 443.7(d) is revised to read as follows:

§ 443.7 The application and policy.

* * * * *

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Hybrid Seed Crop Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Hybrid Seed—Crop Insurance Policy

(This is a continous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) The use of unadapted, incompatible or other genetically deficient male or female seed;

(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(3) The failure to follow recognized good farming practices or the grower provisions of the seed contract;

(4) The impoundment of water by any governmental, public or private dam or reservoir project;

(5) Frost or freeze after the date designated by the actuarial table;

(6) Inadequate germination caused by an insured cause of loss unless inspected and accepted by us before harvest is completed;

(7) Failure or breakdown of irrigation equipment or facilities; or

(8) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured.

a. The crop insured will be any type of female seed ("crop") you elect:

(1) Which is planted for harvest and the production is intended for the purpose of commercial seed to produce a type of the crop for grain or silage;

(2) Which is grown under contract executed with a seed company prior to planting;

(3) Which is grown on insured acreage; and

(4) For which an amount of insurance and premium rate are provided by the actuarial table.

b. An instrument in the form of a "lease" under which you retain control of the acreage on which the insured crop is grown and which provides for delivery of the crop under certain conditions and at a stipulated price(s) will be treated as a contract under which you have the share in the crop.

c. The acreage insured for each crop year will be the crop planted on insurable acreage as designated by the actuarial table.

d. The insured share will be your share as landlord, owner-operator, or tenant in the insured crop at the time of planting.

e. We do not insure any acreage:

(1) Which is destroyed, it is practical to replant the crop, and such acreage was not replanted;

(2) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) Initially planted after the final planting date contained in the actuarial table unless you agree in writing on our form to coverage reduction;

(5) Of a volunteer crop;

(6) Planted to a type or variety of the crop not established as adapted to the area or indicated as noninsurable by the actuarial table;

(7) Planted with another type of crop;

(8) Occupied by rows planted with a mixture of female and male seed;

(9) Planted and occupied by the male plants;

(10) Planted for experimental purposes;

(11) Planted for any purpose other than for commercial seed;

(12) When less than 75 percent of the male seed has not been planted by the final planting date, unless we agree in writing to insure such acreage; or

(13) Grown under a contract with any seed company, and that seed company refuses to provide us records required by us to determine the average yield.

f. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good crop irrigation practice at time of planting; and

(2) Any loss of production caused by failure to carry out a good crop irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause.

g. We may limit the insured acreage to any acreage limitations established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice.

You must report on our form:

a. All the acreage of the crop planted in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any acreage of the insured crop in the county. This report must be submitted annually before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Amounts of Insurance.

a. The amounts of insurance and coverage levels are in the actuarial table.

b. Your production guarantee per acre by type will be 50, 65, or 75 percent of the average yield per acre for each variety grown on the unit which will be determined in the event of a loss. The yields by each specific hybrid seed production variety for the 5-year period immediately preceding the current crop year as provided by the seed company for the county or local geographic area will be used. If less than 5 years of yield records are available for any variety, the average yield per acre will be established by us. Where more than one variety is grown on a unit, the unit guarantee will be the combination of the guarantees of each variety.

c. Coverage level 2 will apply if you have not elected a coverage level.

d. You may change the coverage level and the amount of insurance before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual Premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on insuring experience through the 1983 crop year under the terms of the Experience Table contained in the hybrid seed crop policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80 no further premium reduction will be applicable; and

(5) Participation must be continuous.

6. Deductions for Debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period.

Insurance attaches when both the male and female plant seed are planted and terminates at the earliest of:

(a) Total destruction of the crop;

(b) Combining, threshing, or picking;

(c) Final adjustment of a loss; or

(d) The calendar date established by the actuarial table.

8. Notice of Damage or Loss.

a. In case of damage or probable loss:

(1) You must give us written notice promptly if:

(a) During the period before harvest, the crop on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the crop and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage has been put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate either a germination of less than 80 percent or a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested crop (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the crop on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the crop which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the crop on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of insurance period.

b. We will not pay you any indemnity unless you:

(1) Establish the total production of the crop on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance per acre;

(2) Subtracting from this product the sum of:

(a) The dollar amount obtained by multiplying seed production to count (see section 9e(1)(a)) by the price determined by dividing the amount of insurance per acre by the production guarantee per acre; plus,

(b) The dollar amount obtained by multiplying non-seed production to count (see section 9e(1)(b)) by the local market price of such production on the earlier of the date the loss is adjusted or the date such production is sold; and

(3) Multiplying this balance by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop year results in a lower premium than the premium determined to be due, the guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production.

(1) For crop type field corn:

(a) Total seed production to count will include:

(i) All corn delivered to and accepted by the seed company;

(ii) All corn delivered to but not accepted by the seed company unless the germination is less than 80 percent warm test as determined by a certified seed test conducted at the time of delivery; and

(iii) All harvested and appraised production which does not qualify under (i) and (ii) above because of uninsured causes.

(b) Total non-seed production to count will include all harvested and appraised production which does not qualify as seed production.

(c) For the purpose of determining the quantity of harvested production:

(i) Shelled corn will be reduced .12 percent for each .1 percentage point of moisture in excess of 15.5; and

(ii) Ear corn will be measured at 70 pounds of ear corn equaling 56 pounds (one bushel) of shell corn. The weight of ear corn required to equal one bushel of shell corn will be increased 2 pounds for each percentage point of moisture in excess of 14 percent.

(2) Appraised production to count as seed production will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good farming practices;

(b) Not less than your guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage and given written consent to be put to another use will be considered as seed production unless such acreage is:

(a) Not put to another use before harvest of the crop becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(4) The amount of production of any unharvested acreage of the crop may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) When you have elected to exclude hail and fire as insured causes of loss and the crop is damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request To Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We will pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the crop is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other insurance against the perils insured under this contract, and damage as a result of those perils occurs during the insurance period, we will be liable for loss due to those perils only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from those perils exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from those perils will be the difference between the fair market value of the production on the unit before the loss and after the loss.

10. Concealment or Fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due to us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year.

11. Transfer of Right to Indemnity on Insured Share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and Access to Farm.

You must keep, for two years after the time of loss, records of the harvest, storage, shipment, sale or other disposition of all of the crop produced on each unit including separate records showing the same information for production for any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either your or us for any subsequent crop year by giving written notice to the other on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date for the policy on

which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by United States Department of Agriculture will be the date both such payment and set-off are approved.

d. The cancellation and termination dates are April 15.

e. If you die or are judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consective years.

16. Contract Changes.

We may change any of the terms and provisions of the contract from year to year. If your amount of insurance is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of Terms.

For the purposes of hybrid seed crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the coverage levels, premium rates, amounts of insurance, practices, insurable and uninsurable acreage, and related information regarding hybrid seed insurance in the county.

b. "Commercial seed" means the offspring of two individual seeds of different genetic character produced as a result of crossing. A portion of this resultant offspring is the product intended for the purpose of use on a commercial basis by the agricultural producer (farmer) to produce the field crop type for grain or silage.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. "Crop year" means the period within which the crop is normally grown and is designated by the calendar year in which the crop is normally harvested.

e. "Female plant" means the plants grown for the purpose of producing commercial seed.

f. "Harvest" means the completion of combining, threshing or picking of the crop on the unit.

g. "Initially planted" means the completion of planting of both the female and not less than 75 percent of the male seed before the final planting date.

h. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

i. "Insured" means the person who submitted the application accepted by us.

j. "Male plant" means the plants grown for the purpose of shedding pollen on female plants.

k. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

l. "Seed company" means a company which contracts with a grower to produce or grow for the production of hybrid seed.

m. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

n. "Tenant" means a person who rents land from another person for a share of the crop or a share of the proceeds therefrom.

o. "Type" means the crop grown: i.e., corn, grain sorghum, sunflower, popcorn, etc.

p. "Unit" means all insurable acreage of any one of the crop types in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement between you and us. Units as herein defined will be determined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

q. "Variety" means the seed produced from a pair of genetically identifiable parents.

18. Descriptive Headings.

The descriptive heading of the various policy terms and conditions is formulated for convenience only and is not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on December 6, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

Dated: January 29, 1985.

[FR Doc. 85-2691 Filed 1-31-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 449

Fresh Market Sweet Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues a new Part 449 in Chapter IV of Title 7 of the Code of Federal Regulations, effective for the 1985 and succeeding crop years, for the purpose of prescribing procedures for insuring fresh market sweet corn in counties where such corn is produced. This rule was originally published as a proposed rule at 49 FR 28066 on July 10, 1984, and is hereby adopted as a final rule with a few minor changes in language and the deletion of Appendix A. The intended effect of this rule is to issue regulations (7 CFR Part 449—Fresh Market Sweet Corn Crop Insurance Regulations) under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: March 4, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual

industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On March 28, 1984, the Board of Directors of FCIC approved Docket No. CI–FSwC–85–1B, authorizing FCIC to offer a program of crop insurance on fresh market corn in all counties where such corn is ordinarily produced, effective for the 1985 and succeeding crop years. The regulations contained in this rule are to become effective for the 1985 and succeeding crop years offering protection against crop damage or loss from frost, freeze, hail, fire, tornado, hurricane, or a tropical depression that has been named by the U.S. Weather Service.

On July 10, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 28066, to issue a new Part 449 in Chapter IV of Title 7 of the Code of Federal Regulations prescribing procedures for insuring fresh market sweet corn. The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. In reviewing the regulations prior to issuance as a final rule, it was determined to eliminate the codification of Appendix A, since FCIC service offices in the United States will be able to advise a producer if fresh market sweet corn insurance is offered in a particular county. Therefore, with the exception of the elimination of Appendix A and minor and non-substantive changes in language, the proposed rule as published is hereby issued as a final rule, effective with the 1985 and succeeding crop years.

List of Subjects in 7 CFR Part 449

Crop insurance, Fresh market sweet corn.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby adds a new part in Chapter IV of Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 449 Fresh Market Sweet Corn Crop Insurance Regulations, effective for the 1985 and succeeding crop years, to read as follows:

PART 449—FRESH MARKET SWEET CORN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

449.1 Availability of fresh market sweet corn insurance.
449.2 Premium rates, coverage levels, and amounts of insurance.
449.3 OMB control numbers.
449.4 Creditors.
449.5 Good faith reliance on misrepresentation.
449.6 The contract.
449.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 449.1 Availability of fresh market sweet corn insurance.

Insurance shall be offered under the provisions of this subpart on fresh market sweet corn in counties within limits prescribed by, and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 449.2 Premium rates, coverage levels, and amounts of insurance.

(a) The Manager shall establish premium rates, coverage levels, and amounts of insurance for fresh market sweet corn which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect an amount of insurance per acre and a coverage level from among those levels and amounts contained in the actuarial table for the crop year.

§ 449.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 449) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 449.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer, or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 449.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the fresh market sweet corn insurance contract, whenever (a) an insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 449.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the fresh market sweet corn crop as provided in the policy. The contract shall consist of the application, the policy, and the county

actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the service office.

§ 449.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the fresh market sweet corn crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a fresh market sweet corn contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Fresh Market Sweet Corn Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Fresh Market Sweet Corn—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Frost;
(2) Freeze;
(3) Hail;
(4) Fire;
(5) Tornado;
(6) Hurricane;
(7) Tropical depression that has been named by the U.S. Weather Service; or
(8) Failure of the irrigation water supply after planting due to an unavoidable cause; unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;
(2) The failure to follow recognized good sweet corn farming practices;
(3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project;
(4) Any cause not specified in section 1a as an insured loss;
(5) The failure to carry out a good sweet corn irrigation practice; or
(6) The breakdown of irrigation equipment or facilities.

2. Crop, acreage, and share insured.

a. The crop insured will be sweet corn which is planted for harvest as fresh market sweet corn in which you have a share as reported by you or as determined by us, whichever we shall elect; which if grown on insured acreage; and for which an amount of insurance and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be irrigated acreage designated as insurable by the actuarial table.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured sweet corn at the time of each planting period.

d. We will not insure any acreage of sweet corn grown by any person if:

(1) The person had not grown sweet corn for commercial sales the previous crop year; or
(2) The person had not participated in the management of the sweet corn farming operation the previous crop year.

e. We do not insure any acreage:

(1) Of sweet corn grown for direct consumer marketing;
(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(3) Which is not irrigated;
(4) Which is destroyed, it is practical to replant to sweet corn, and such acreage is not replanted;
(5) Initially planted after the final date contained in the actuarial table;
(6) Of volunteer sweet corn;
(7) Planted to a type or variety of sweet corn not established as adapted to the area or excluded by the actuarial table;
(8) Planted for experimental purposes; or
(9) Planted with a crop other than sweet corn.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report at the time of each planting period on our form:

a. All the acreage of fall, winter and spring-planted sweet corn in the county in which you have a share;
b. The practice; and
c. Your share.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sweet corn plantings in the county. This report must be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. We may determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit for each planting period the insured acreage, share, and practice or we may deny liability on any unit for any planting. Any report submitted by you may be revised only upon our approval.

4. Coverage levels and amounts of insurance.

a. The coverage levels and amounts of insurance are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and amount of insurance before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance, times the premium rate, times the insured acreage, times your share at the time of each planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the sweet corn is planted in each planting period and ends at the earliest of:

a. Total destruction of the sweet corn on the unit;
b. Discontinuance of harvest on the unit;
c. The date harvest should have started on the unit on any acreage which will not be harvested;

d. Final harvest; or

e. Final adjustment of a loss.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant sweet corn damaged due to any insured cause. (To qualify for a replanting payment, the acreage replanted shall be at least the lesser of 10 acres or 10 percent of the insured acreage sustaining a loss in excess of 25 percent of the plant stand on the unit);

(b) During the period before harvest, the sweet corn on any unit is damaged and you decide not to further care for or harvest any part of the sweet corn;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs. Insured acreage may not be put to another use until we have appraised the sweet corn and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined and you are going to claim an indemnity on any unit, notice must be given by you not later than 48 hours:

(a) After total destruction of the sweet corn on the unit;

(b) After discontinuance of harvest on the unit; or

(c) Before harvest would normally start if any acreage on the unit is not to be harvested.

b. You may not destroy or replant any of the sweet corn on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the sweet corn which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sweet corn on the unit;

(2) Discontinuance of harvesting on the unit; or

(3) The date harvest should have started on the unit on any acreage which will not be harvested.

b. We will not pay any indemnity unless you:

(1) Establish the total production and the value received for all sweet corn on the unit and that any loss of production or value has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance times the percentage for the stage of production defined by the actuarial table;

(2) Subtracting the total value of production to be counted (see section 9f); and

(3) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

e. The indemnity will be reduced by the amount of any replanting payment.

f. The total value of production to be counted for a unit will include all harvested and appraised production.

(1) The total value will include any amount received for sweet corn on the unit minus the allowable cost as established by the actuarial table.

(2) The value of appraised production to count will include:

(a) The value of unharvested mature sweet corn;

(b) The value of potential production lost due to uninsured causes and failure to follow recognized good sweet corn farming practices;

(c) Not less than the dollar amount of insurance per acre for any acreage;

(i) Abandoned or put to another use without prior written consent; or

(ii) Which is damaged solely by an uninsured cause; or

(d) The value of any appraised production of mature sweet corn on unharvested acreage.

(3) Unharvested sweet corn injured by or with defects due to insurable causes and which cannot be marketed, will not be counted.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sweet corn becomes general in the county for the planting period;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(5) The amount and value of production of any unharvested sweet corn may be determined on the basis of field appraisals conducted after the end of the insurance period.

(6) The value of unsold harvested or appraised production shall be determined by multiplying such production by the simple average F.O.B. shipping point price per crate (minus allowable cost as established by the actuarial table), as reported by the Federal-State Market News Service, for the seven consecutive market days commencing the earlier of:

(a) The date harvest starts; or

(b) The date harvest could have started on any acreage which will not be harvested.

The price for such sweet corn will not be less than $4.00 per crate minus allowable cost established by the actuarial table.

(7) When you have elected to exclude hail and fire as insured causes of loss and the sweet corn is damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI-78-A, "Request to Exclude Hail and Fire".

(8) The value of commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

g. A replanting payment may be made on any insured sweet corn replanted after we have given consent if:

(1) The acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage sustaining a loss in excess of 25 percent of the plant stand for the unit; and

(2) No replanting payment has been made on the acreage on which a replanting payment is claimed during the current crop year.

The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the product obtained by multiplying $40.00 per acre by your share.

h. If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment and the indemnity will be reduced proportionately.

i. Any replanting payment will be considered as an indemnity.

j. You must not abandon any acreage to us.

k. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

l. We shall pay the loss within 30 days after we reach agreement with you or entry of a final judgment. In no event will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

m. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sweet corn is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

n. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amout due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect

the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all sweet corn produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on with the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim will be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such payment and set off was approved.

d. The cancellation and termination dates are July 1 for all counties.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurrs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16 Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by April 30 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of sweet corn crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance, coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding sweet corn insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the sweet corn is normally grown beginnig July 15 and continuing through the harvesting of the spring-planted sweet corn and is designated by the calendar year in which the spring-planted sweet corn is normally harvested.

d. "Direct Consumer Marketing" means sweet corn which is grown for the purposes of selling the sweet corn produced directly to the consumer; or on acreage which is not subject to an agreement between producer and packer to pack the production. (The agreement must be made before you report your acreage.)

e. "Harvest" means the final picking of marketable sweet corn on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Marketable Sweet Corn" means the sweet corn which has reached the stage of development that will withstand normal handling and shipping.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Planting Period" means the sweet corn planted within the dates specified by the actuarial table, as fall-planted, winter-planted or spring-planted.

k. "Plant Stand" means the number of live plants per acre before the plants were damaged due to insurable causes.

l. "Replanting" means performing the cultural practices necessary to replant insured acreage to sweet corn.

m. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

n. "Sweet corn" means a type of corn with kernel containing a high percentage of sugar and adapted for table use.

o. "Tenant" means a person who rents land from another person for a share of the sweet corn or a share of the proceeds therefrom.

p. "Unit" means all insurable acreage of sweet corn for each planting period in the country on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sweet corn on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units as herein defined will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy shall be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with FCIC's Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on November 27, 1984.

Dated: January 29, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-2690 Filed 1-31-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Stabilization and Conservation Service

7 CFR Part 701

Conservation and Environmental Programs

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt as a final rule an interim rule which was published in the **Federal Register** on July 30, 1984 (49 FR 30295). The interim rule deleted the regulations at 7 CFR 701.21 which set forth certain obsolete procedures which had been utilized to make materials and services available to eligible producers under the Agricultural Conservation Program.

EFFECTIVE DATE: February 1, 1985.

FOR FURTHER INFORMATION CONTACT: Gordell A. Brown, Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013, telephone 202–447–6221. The Final Regulatory Impact Analysis describing the options considered in developing this rule will be available from Gordell A. Brown.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 701) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560–0112.

This final rule has been reviewed for compliance with Executive Order 12291 and Departmental Regulation No. 1521–1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Agricultural Conservation Program; Number—10.063; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

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

This program/activity is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Agricultural Conservation Program (ACP) is authorized generally by sections 7–17 of the Soil Conservation and Domestic Allotment Act of 1936, as amended (16 U.S.C. 590 *et seq.*) The program provides financial incentives and technical assistance to encourage agricultural producers to voluntarily perform enduring soil and water conservation and pollution abatement measures, including practices or programs which are deemed essential to maintain soil productivity, prevent soil depletion, or prevent increased costs of production. The purpose of the program is to assure a continuous supply of food and fiber necessary for the maintenance of strong and healthy people.

On July 30, 1984, an interim rule was published in the **Federal Register** (49 FR 30295). A comment period was provided through September 28, 1984. The interim rule deleted the regulations found at 7 CFR 701.21 which set forth the procedures which are utilized to make conservation materials and services available to eligible agricultural producers in order to carry out approved conservation work under the Agricultural Conservation Program (ACP). This provision of the regulations became obsolete since the direct appropriation of ACP funds which are to remain available until expended makes it possible to pay eligible producers as soon as they have completed approved conservation practices.

No comments were received with respect to the changes made by the interim rule. Therefore, it has been determined that the interim rule should be adopted as a final rule.

List of Subjects in 7 CFR Part 701

Disaster assistance, Forests and forest products, Grant programs natural resources, Rural areas, Soil conservation, Water resources, Wildlife.

Final Rule

PART 701—CONSERVATION AND ENVIRONMENTAL PROGRAM

Accordingly, the interim rule published at 49 FR 30295 removing 7 CFR 701.21 is hereby adopted as a final rule without change.

Signed at Washington, D.C., on January 28, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85–2701 Filed 1–31–85; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Maketing Service

7 CFR Part 910

[Lemon Regulation 501; Lemon Regulation 500, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to fresh market at 225,000 cartons during the period February 3–9, 1985, and increases the quantity of lemons that may be shipped to 240,000 cartons during the period January 27–February 2, 1985. Such action is needed to provide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective February 3, 1985, and the amendment is effective for the period January 27–February 2, 1985.

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

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

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona.

The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on January 29, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is good.

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

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.801 is added to read as follows:

§ 910.801 Lemon Regulation 501.

The quantity of lemons grown in California and Arizona which may be handled during the period February 3, 1985, through February 9, 1985, is established at 225,000 cartons.

2. Section 910.800 Lemon Regulation 500 is revised to read as follows:

§ 910.800 Lemon Regulation 500.

The quantity of lemons grown in California and Arizona which may be handled during the period January 27, 1985, through February 2, 1985, is established at 240,000 cartons.

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

Dated: January 30, 1985.

Thomas R. Clark,

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

[FR Doc. 85–2831 Filed 1–31–85; 9:59 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1434

Honey Price Support Regulations Governing 1982 and Subsequent Crops; Amdt. 3

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The proposed rule published in the **Federal Register** on October 4, 1984 (49 FR 39167), is hereby adopted as a final rule with limited technical revisions. This final rule amends the regulations governing the Honey Price Support Program to provide that, beginning with 1984 crop honey, the quality and color of honey delivered to the Commodity Credit Corporation (CCC) shall be determined in accordance with the Agricultural Stabilization and Conservation Service (ASCS) Specifications for Unprocessed Honey. Previous to the 1984 crop, honey was graded according to the United States Standards for Grades of Extracted Honey which is a criterion for processed honey. This action will provide for more realistic and equitable grading of unprocessed honey which is acquired by the CCC under the price support loan and purchase program.

EFFECTIVE DATE: February 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ross D. Ballard, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013 Phone: (202) 447–4704.

A copy of the ASCS Specifications for Unprocessed Honey is available for review from the above-named individual.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1434) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, and have been assigned OMB clearance numbers 0560–0040 and 0560–0087.

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

It has been determined that the Regulatory Flexibility Act is not applicable to the rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This activity is not subject to the provisions of Executive Order 12372 which requires inter governmental consultation with State and Local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

An Environmental Evaluation has been completed. It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program to which this final rule applies to are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

Proposed Rule

On October 4, 1984, a rule proposing to amend the Honey Price Support Regulations Governing 1982 and Subsequent Crops was published in the **Federal Register** at 49 FR 39167. The rule proposed to amend the regulations at 7 CFR Part 1434 to provide for the use of ASCS Specifications for Unprocessed Honey as the criterion for determining quality and color of honey delivered to CCC rather than the United States Standards for Grades of Extracted Honey. A comment period was provided through December 3, 1984. No comments were received with respect to the provisions contained in the proposed rule.

Accordingly, it has been determined that the provisions of the proposed rule should be adopted as the final rule with a technical revision. In developing and publishing the proposed rule part of the color certification relating to the United States Standards of Grades of Extracted Honey was inadvertently retained in 7 CFR 1434.17(c). Since the appropriate color certification procedures are fully contained in the ASCS Specification for Unprocessed Honey, § 1434.17(c) has been revised to delete the unnecessary provisions. It is not believed that this change is of such significance as to warrant further public comment.

List of Subjects in 7 CFR Part 1434

Honey, Loan programs—agriculture, Price support programs, Warehouse.

PART 1434—[AMENDED]

Final Rule

Accordingly, 7 CFR 1434.17(b) and (c) are revised to read as follows:

§ 1434.17 Determination of quality.

* * * * *

(b) *Quality for settlement* (1) *Farm storage in eligible containers.* When honey is delivered to CCC in eligible containers from farm storage, its quality and color shall be determined by the Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), in accordance with the ASCS Specifications for Unprocessed Honey on the basis of samples drawn by ASCS representatives supervising delivery. Samples shall not be drawn until the producer has designated all lots. Single containers shall not be considered as lots unless necessitated by color or floral source. The cost of quality and color determinations for a maximum of four lots shall be for the account of CCC.

(2) *Identity-preserved warehouse-stored.* When honey stored identity-preserved in containers in an approval warehouse is delivered to CCC, its quality and color shall be determined by the Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service (AMS), in accordance with the ASCS Specifications for Unprocessed honey on the basis of samples drawn by ASCS representatives supervising delivery. The cost of such determination shall be for the account of CCC.

(c) *Segregation by color.* Table honey in eligible containers shall, insofar as is practicable, be segregated into lots by color to conform with the color categories which are set forth in the ASCS Specifications for Unprocessed Honey.

* * * * *

Authority: Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. .714b); Sec. 5, 62 Stat. 1072, (15 U.S.C. 714c); secs. 201, 401, 63 Stat. 1052, as amended, 1054, as amended (7 U.S.C. 1446, 1421).

Signed at Washington, D.C., on January 28, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85-2700 Filed 1-31-85; 8:45 am]

BILLING CODE 3410-05-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Share, Share Draft, and Share Certificate Accounts

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board adopts an amendment to the regulations concerning disclosures, fees, and time for crediting of deposited funds relating to share, share draft, and share certificate accounts. Recognizing the dual chartering system for credit unions, the Board, by way of this final rule, is formally stating its position on its jurisdiction to regulate Federal credit unions ("FCU's"). The rule interprets and implements the provisions in Section 107(6) of the Federal Credit Union Act ("Act") (12 U.S.C. 1757(6)) authorizing FCU's to receive payments on shares, share certificates, and share drafts, "subject to such terms, rates, and conditions as may be established by the board of directors [of an FCU], within the limitations prescribed by the Board."

EFFECTIVE DATE: February 1, 1985.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, Director, Department of Legal Services, or Steven Bisker, Assistant General Counsel, at the above address. Telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 1984, (49 FR 46552) the NCUA Board published a proposal to add two new paragraphs, (c) and (d), to Section 701.35 of the NCUA Rules and Regulations. The Board requested public comment on the proposed rule.

As discussed in the preamble to the proposed rule, the Board considered an amendment to the rule necessary in order to clarify its intent in previously deregulating Section 701.35, because of recent actions by several states attempting to regulate Federal credit unions. This final rule provides that policies with respect to disclosures, fees or charges, time for crediting of deposited funds, and other matters affecting the opening, maintaining or closing of a share, share draft or share certificate account, shall be determined by an FCU's member-elected board of directors, free from regulatory restrictions. This action will ensure the continued efficacy of the NCUA Board's previous deregulation of FCU share account activity and furthers the Board's longstanding support of a viable dual chartering system.

The Board received a total of 25 comments—16 from FCU's, 1 from a state chartered credit union, 5 from credit union leagues and trade associations, 2 from state regulatory authorities, and 1 from a law firm. All of the commenters, except those from the state regulatory authorities and the state credit union, supported the proposed amendment.

Analysis of Comments

Crediting of deposited funds

The majority of the commenters stated that, although they currently have policies whereby checks (drafts) deposited into their members' accounts are given credit immediately (treated as if they were cash deposits), they still support the Board's position that such policies should be decided by an FCU's board of directors and not dictated by statute or regulation. Further, the commenters stressed that, in any event, they should not be subject to state laws since that would be inconsistent with the dual chartering system and would result in regulatory conflicts.

Another point stressed by the commenters was the democratic form of ownership of FCU's. They believed that if the policies of an FCU were unacceptable to its members, the officials of the FCU would be replaced at the next annual election. Therefore, the system provides its own mechanism of enforcement and protection for the members. As one commenter stated: "* * * as member owned and controlled financial institutions, [FCU's] cannot afford to alienate their 'customers.' If we did, the elected officials and management would be job hunting."

One commenter opposed to the rule expressed the opinion that FCU's should be required to follow state laws

mandating "check hold" policies and specified disclosures. It is this commenter's belief that only through compliance with state laws governing all financial institutions in the state will the consumer be treated equitably.

The Board is equally concerned with the fair treatment of FCU members. However, for the reasons stated above, the Board does not agree that regulations are necessary. Moreover, a review of NCUA's consumer complaint handling process indicates only a very limited number of complaints concerning share account disclosures, funds availability and other share account policies. In sum, share account deregulation is working well in FCU's. To allow the states to regulate would infringe on NCUA's jurisdiction in this area and would be inconsistent with the dual chartering system.

Fees

A number of commenters stated that they do not charge fees to their members. However, they agreed that the matter of determining what fees, if any, to charge members should be a matter to be decided by an FCU's board rather than dictated by regulation.

One commenter, a state regulatory agency, was particularly concerned about the impact of this regulation on the state's right to escheat abandoned accounts. The commenter was concerned with the possibility that service charges assessed against inactive (dormant) accounts might absorb accounts or portions thereof. The Board previously addressed this issue in its Interpretive Ruling and Policy Statement 82-4, Examination For Compliance with State Unclaimed Property Laws. (47 FR 53325 (November 26, 1982)). The Board stated that: "To the extent that such charges are either authorized or not prohibited by the Federal Credit Union Act, NCUA Rules and Regulations or Board policy, and are provided for in the contract with the member, it is the Board's position that state law prohibiting such charges would be preempted."

The Board is confident that FCU's will continue to serve their members well, and does not believe that the issue of fees is one that requires regulatory control at this time.

Broader Rule

A few commenters expressed their support for the rule but states that it does not go far enough. One commenter suggested that the Board incorporate into the rule a restatement of the statutory authority granted FCU's in section 107(6) of the Act to receive payments on shares, share certificates and share drafts subject to such terms, rates, and conditions as established by an FCU's board of directors. Inasmuch as the rule does not replace or alter the authority in the Act, the Board does not believe it is necessary to restate the authority provided by the Act.

Another commenter stated that the laws of its state impose sales taxes on charges pertaining to FCU member accounts and services and require FCU's to collect such taxes from their members and remit them to the local government. The sales tax applies to such charges as: check/draft printing charges, account maintenance fees, NSF charges, etc. The commenter suggested that the Board address this issue in the rule. The issue of taxation is addressed in a separate section of the Act. Section 122 of the Act (12 U.S.C. 1768) specifies the liability of FCU's for paying taxes and the role of FCU's in collecting taxes. The issue raised by the commenter is more appropriately dealt with within the ambit of Section 122, rather that this rule which relies upon Section 107(6) as its principal statutory basis.

Effective Date of the Rule

This final rule will be effective upon publication. The rule provides greater authority to FCU's and relieves restrictions. Further, since several states now purport to regulate FCU's in this area, it is necessary to have the rule become effective immediately in order to eliminate uncertainty.

Regulatory Procedures

Regulatory Flexibility

The NCUA Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions because the rule will increase their management flexibility and reduce their paperwork burdens. A Regulatory Flexibility Analysis is, therefore, not required.

Financial Regulation Simplification Act

Since this final rule reduces burdens and delay would cause unnecessary harm, the NCUA Board finds that full and separate consideration of all the requirements of the Financial Regulation Simplification Act is impracticable. The NCUA Board has, however, considered most of these policies, as set forth in the preamble above.

List of Subjects in 12 CFR Part 701

Credit unions, Share drafts, Share certificates, Funds availability, Fees, Disclousres.

(12 U.S.C. 1757(6), 1766(a), and 1789(a)(11)

By the National Credit Union Administration Board on the 24th day of January, 1985.

Rosemary Brady,

Secretary of the Board.

Accordingly, the NCUA rules and regulations in 12 CFR Chapter VII are amended as follows:

PART 701—[AMENDED]

§ 701.35 [Amended]

Section 701.35 is amended by adding two new paragraphs, (c) and (d), to read as follows:

* * * * *

(c) A Federal credit union is empowered to determine the types of disclosures, fees or charges, time for crediting of deposited funds, and all other matters, not inconsistent with this Section, affecting the opening, maintaining or closing of a share, share draft or share certificate account. To the extent that state law attempts to regulate such activity, it is not applicable. Nothing herein is intended, however, to allow a Federal credit union to amend or modify its contract with a member unilaterally unless it has previously reserved the right to do so.

(d) For purposes of this section, "state law" means the constitution, statutes, regulations, and judicial decisions of any state, the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

[FR Doc. 85-2638 Filed 1-31-85; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-07-AD; Amdt. 39-4994]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that would require inspection of the fuselage lower skin in the immediate area surrounding the VHF antenna, on certain McDonnell Douglas DC-9 series airplanes. This amendment is prompted by reports of cracks in the skin adjacent to the mounting holes for the VHF antenna. If allowed to go undetected,

this type of crack could result in rapid depressurization of the airplane.

DATES: Effective February 1, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548–2824.

SUPPLEMENTARY INFORMATION: Six operators have reported cracks in the lower fuselage skin under the forward VHF antenna on eight aircraft.

The affected aircraft had accumulated from 14,129 to 47,352 cycles. Typically, the cracks in the skin occurred adjacent to the mounting holes for the VHF antenna. The reported crack lengths ranged from 4 to 18 inches. The forward antenna support intercostal, P/N 5911412–37, was found cracked on all eight aircraft. This intercostal was cracked on two additional aircraft which did not exhibit the skin cracks. Further analysis has determined that the cracks can progress and, if not detected and repaired, rapid depressurization can occur. This conclusion is based upon crack growth analysis of the fuselage pressurized structure in the area of the VHF antenna. Inspections for cracks and installing repairs in accordance with McDonnell Douglas Telex Alert Service Bulletin A53–188, will ensure the integrity of the fuselage skin until installation of permanent repair or crack preventive modifications can be accomplished.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD is being issued to require inspection of the lower fuselage skin, forward and aft of the VHF antenna, for cracks, as described in McDonnell Douglas Telex Alert Service Bulletin A53–188, dated January 9, 1985. Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–9 and C–9 (Military) series airplanes, certificated in all categories. Compliance required as indicated unless previously accomplished.

To detect cracks in the fuselage skin adjacent to or under the lower forward VHF antenna, accomplish the following:

A. For aircraft with 10,000 or more landings, inspect for cracks in accordance with McDonnell Douglas Telex Alert Service Bulletin A53–188, dated January 9, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, within the next 150 landings after the effective date of this airworthiness directive (AD).

Note.—McDonnell Douglas Alert Service Bulletin A53–188, dated January 9, 1985 (or later revisions approved by the Manager, Los Angels Aircraft Certification Office, FAA, Northwest Mountain Region), is hereinafter referred to as ASB A53–188.

1. If cracks are found in the fuselage skin, inspect the antenna support intercostal for cracks before further flight, and repair in accordance with ASB A53–188. Reinspect the area around the repair in accordance with ASB A53–188, at intervals not to exceed 1500 landings after accomplishment of the repair.

2. If no cracks are found and the VHF antenna was not removed, reinspect in accordance with ASB A53–188, at intervals not to exceed 250 landings after the accomplishment of the last inspection.

3. If no cracks are found and the VHF antenna was removed, reinspect in accordance with ASB A53–188, at intervals not to exceed 1,000 landings after the accomplishment of the last inspection.

Note.—McDonnell Douglas is developing a preventive repair or crack preventive modification, which, when approved, will provide terminating action for this AD. The AD will be amended accordingly.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for accomplishment of the inspections and repairs required by this AD. The aircraft may be operated without cabin pressurization as a placard installed in the cockpit, in full view of the pilots, stating:

"OPERATION WITH CABIN PRESSURIZATION IS PROHIBITED."

C. Alternative inspections, modifications, or other actions which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certificate Office, FAA, Northwest Mountain Region.

D. Upon request of an operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator, if the request contains substantiating data to justify the increase for that operator.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective February 1, 1985.

(Sec. 313(a), 314(a), 601 through 610, and 1101 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on January 23, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–2605 Filed 1–31–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 24447; Amdt. No. 1287]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by references in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA from documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Airports, Air traffic control, Aviation safety, Approaches, Standard instrument.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

* * * *Effective April 11, 1985*

Warsaw, IN—Warsaw Muni, VOR RWY 9, Amdt. 1
Shenandoah, IA—Shenandoah Muni, VOR/DME RWY 12, Amdt. 1
Madison, WI—Dane County Regional—Truax Field, VOR RWY 13, Amdt. 18
Madison, WI—Dane County Regional—Truax Field, VOR RWY 18, Amdt. 16
Madison, WI—Dane County Regional—Truax Field, VOR RWY 31, Amdt. 19

* * * *Effective March 14, 1985*

Demopolis, AL—Demopolis Muni, VOR/DME-A, Amdt. 1, Cancelled
Tallassee, AL—Tallassee Muni, VOR RWY 9, Amdt. 2, Cancelled
Tallassee, AL—Tallassee Muni, VOR/DME RWY 27, Orig., Cancelled
Hays, KS—Hays Muni, VOR RWY 16, Amdt. 2
Hays, KS—Hays Muni, VOR RWY 34, Amdt. 4
Hays, KS—Hays Muni, VOR/DME RWY 16, Amdt. 2
Hays, KS—Hays Muni, VOR/DME RWY 34, Amdt. 1
Millinocket, ME—Millinocket Muni, VOR-A, Amdt. 9
Haverhill, MA—Haverhill, VOR-A, Amdt. 4, Cancelled
Mexico, MO—Mexico Memorial, VOR/DME-A, Amdt. 5
Houston, TX—Baytown, VOR RWY 13, Orig.
Houston, TX—Baytown, VOR RWY 31, Orig.
Odessa, TX—Odessa-Schlemeyer Field, VOR-A, Amdt. 4

* * * *Effective February 14, 1985*

Fort Bridger, WY—Fort Bridger, VOR RWY 22, Orig.

* * * *Effective January 16, 1985*

Washington, D.C.—Washington National, VOR RWY 15, Amdt. 7

Washington, D.C.—Washington National, VOR RWY 36, Amdt. 9

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective April 11, 1985*

Warsaw, IN—Warsaw Muni, SDF RWY 18, Amdt. 3, Cancelled
Warsaw, IN—Warsaw Muni, SDF BC RWY 36, Amdt. 1, Cancelled
Springdale, AR—Springdale Muni, LOC RWY 18, Amdt. 2, Cancelled
Hays, KS—Hays Muni, LOC RWY 34, Amdt. 1

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

** * * Effective April 11, 1985*

Warsaw, IN—Warsaw Muni, NDB-A, Amdt. 2, Cancelled
Shenandoah, IA—Shenandoah Muni, NDB RWY 30, Amdt. 9
Madison, WI—Dane County Regional—Truax Field, NDB RWY 36, Amdt. 26

** * * Effective March 14, 1985*

Hailey, ID—Friedman Memorial, NDB-A, Orig.
Hugoton, KS—Hugoton Muni, NDB RWY 2, Amdt. 1
Millinocket, ME—Millinocket Muni, NDB RWY 29, Amdt. 2
Plymouth, MA—Plymouth Muni, NDB RWY 6, Amdt. 7
Chillicothe, MO—Chillicothe Muni, NDB RWY 14, Amdt. 6
Odessa, TX—Odessa-Schlemeyer Field, NDB RWY 20, Amdt. 2
Minocqua/Woodruff, WI—Noble F. Lee Memorial Field, NDB RWY 10, Amdt. 6, Cancelled

** * * Effective January 18, 1985*

Charlottesville, VA—Charlottesville-Albemarle, NDB RWY 3, Amdt. 14

** * * Effective January 16, 1985*

Washington, D.C. —Washington National, NDB RWY 36, Amdt. 8
Pennington Gap, VA—Lee County, NDB-A, Amdt. 1

4. By amending § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

** * * Effective April 11, 1985*

Madison, WI—Dane County Regional—Truax Field, ILS RWY 18, Amdt. 4
Madison, WI—Dane County Regional—Truax Field, ILS RWY 36, Amdt. 26

** * * Effective March 14, 1985*

Springdale, AR—Springdale Muni, ILS RWY 18, Orig.
Cleveland, OH—Cleveland-Hopkins Intl, ILS RWY 28R, Amdt. 17

** * * Effective January 23, 1985*

Keene, NH—Dillant-Hopkins, ILS RWY 2, Amdt. 11

** * * Effective January 18, 1985*

Charlottesville, VA—Charlottesville-Albemarle, ILS RWY 3, Amdt. 11

** * * Effective January 16, 1985*

Washington, D.C.—Washington National, ILS RWY 36, Amdt. 34

5. By amending § 97.31 RADAR SIAPS identified as follows:

** * * Effective April 11, 1985*

Madison, WI—Dane County Regional—Truax Field, RADAR-1, Amdt. 12

** * * Effective March 14, 1985*

Battle Creek, MI—W.K. Kellogg Regional, RADAR-1, Orig.

** * * Effective January 16, 1985*

Washington, D.C.—Washington National, RADAR-1, Amdt. 24

6. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective March 14, 1985*

Hays, KS—Hays Muni, RNAV RWY 16, Amdt. 3
Newburgh, NY—Stewart, RNAV RWY 27, Orig.

** * * Effective January 18, 1985*

Charlottesville, VA—Charlottesville-Albemarle, RNAV RWY 3, Amdt. 4

** * * Effective January 16, 1985*

Washington, D.C.—Washington National, RNAV RWY 33, Amdt. 5
Washington, D.C.—Washington National, RNAV-A, Amdt. 6

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

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

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C. on January 25, 1985.

John S. Kern,

Acting Director of Flight Operations.

[FR Doc. 85-2606 Filed 1-31-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-235 (Colorado—39) Order No. 411]

High-Cost Gas Produced From Tight Formations; Colorado

Issued: January 18, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

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) (1984)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This order adopts the recommendation of the State of Colorado Oil and Gas Conservation Commission that the Niobrara Formation located in Larimer and Weld Counties, Colorado, be designated as a tight formation.

EFFECTIVE DATE: This rule is effective February 19, 1985.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, (202) 357-5491 or Victor Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION:

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

The Commission amends § 271.703(d) of its regulations (18 CFR 271.703(d) (1984)) to include the Niobrara Formation located in Larimer and Weld Counties, Colorado, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued September 4, 1984 (49 FR 35384, September 7, 1984),[1] based on a

[1] Comments on the proposed rule were invited and none were received. No party requested a public hearing and no hearing was held.

recommendation by the State of Colorado Oil and Gas Conservation Commission (Colorado) in accordance with § 271.703, that the Niobrara Formation located in Larimer and Weld Counties, Colorado, be designated as a tight formation.

Evidence submitted by Colorado supports the assertion that the Niobrara Formation located in Larimer and Weld Counties, Colorado, meets the guidelines contained in § 271.703(c)(2). The Commission adopts Colorado's recommendation.

This amendment shall become effective February 19, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, *Code of Federal Regulations*, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 is revised to read 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 paragraph (d)(184) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(184) *Niobrara Formation in Colorado.* RM79-76-235 (Colorado-39).

(i) *Delineation of formation.* The Niobrara Formation is located in Weld County, Colorado, in Township 4 North, Range 66 West, 6th P.M., Sections 2 through 10, and 15 through 18; Township 5 North, Range 64 West, 6th P.M., Sections 1 through 24; Township 5 North, Range 65 West, 6th P.M., Section 1; Township 5 North, Range 66 West, 6th P.M., Sections 2 through 11, and 14 through 35; Township 5 North 67 West, 6th P.M., Sections 1 through 3, 11 through 14, 23 and 24; Township 6 North, Range 64 West, 6th P.M., Sections 7, and 13 through 36; Township 6 North, Range 65 West, 6th P.M., Sections 7 through 31, and 34 through 36; Township 6 North, Range 66 West, 6th P.M., Sections 6 through 36; Township 6 North, Range 67 West, 6th P.M., all Sections; and in Larimer County, Colorado, in Township 6 North, Range 68 West, 6th P.M., Sections 1 and 2, 11 through 14, 23 through 26, 35 and 36.

(ii) *Depth.* The Niobrara Formation is defined as that interval which begins at a depth of approximately 6,900 feet and varies in thickness from 280 feet to 320 feet.

* * * * *

[FR Doc. 85-2352 Filed 1-31-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for Use in Externally Applied Drugs and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for use as color additives in externally applied drugs and cosmetics. The new closing date will be April 2, 1985. This postponement will provide additional time for determining the applicability of the statutory standard for the listing of noningested color additives to the results of the scientific investigations of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37.

DATES: Effective February 1, 1985, the new closing date for D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 will be April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Gerad McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of February 1, 1985, for the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for use in externally applied drugs and cosmetics by a final rule published in the **Federal Register** of December 3, 1984 (49 FR 47229). The agency had previously extended the closing dates for these color additives on several occasions. For a full procedural history of the provisional listing of these color additives, see 48 FR 38814 for D&C Red No. 19 and D&C Red No. 37 and 48 FR 44774 for D&C Orange No. 17.

FDA extended the closing date for the provisional listing of these color additives on these occasions to permit consideration of the scientific and legal aspects of the submissions of the petitioner, the Cosmetic, Toiletry and Fragrance Association, Inc., in support of the safety of the external uses of these color additives. Although D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 have been shown to be animal carcinogens upon ingestion, somewhat different questions are raised by the request to list these color additives for noningested use. It has taken more time to review the data involved in resolving these questions than the agency anticipated. Additional time is still needed to determine the applicability of the statutory standard for the listing of color additives for noningested use of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37. The regulations set forth below will postpone the February 1, 1985 closing date for the provisionally listed use of these color additives until April 2, 1985. The postponement will also provide additional time for the preparation and the publication of **Federal Register** documents setting forth the final decision on the petitions for the permanent listing of these color additives for external use. The continued use of these color additives in the externally applied products for the short time needed for the adequate review of the data and for the preparation of **Federal Register** documents that will announce the decision on these color additives will not pose a hazard to the public health.

Since the last time that the provisional listing was extended, FDA received a petition from Public Citizen Health Research Group that asks the agency to ban the use of these color additives. This petition is currently under review. This postponement will provide additional time for consideration of this petition.

Because of the short time until the February 1, 1985 closing date, FDA concludes that notice and public procedure on these amendments are impracticable, and that good cause exists for issuing the postponement as a final rule. This final rule will permit the uninterrupted use of these color additives until April 2, 1985. To prevent any interruption in the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 and in accordance with 5 U.S.C. 553(d) (1) and

(3), this final rule is being made effective February 1, 1985.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives,* by revising the closing date for "D&C Orange No. 17," "D&C Red No. 19," and "D&C Red No. 37" in paragraph (b) to read "April 2, 1985."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing,* by revising the closing date for "D&C Orange No. 17," "D&C Red No. 19," and "D&C Red No. 37" in paragraph (d) to read "April 2, 1985."

Effective date. This final rule shall be effective February 1, 1985.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: January 17, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–2600 Filed 1–31–85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of FD&C Red No. 3 and of FD&C Yellow No. 5 in Cosmetics and Externally Applied Drugs and of Their Lakes in Food and Ingested Drugs; Provisional Listing of FD&C Yellow No. 6 for Use in Food, Drugs, and Cosmetics; Provisional Listing of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 in Drugs and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in coloring cosmetics and externally applied drugs and of the lakes of these color additives for use in coloring food and ingested drugs; of FD&C Yellow No. 6 for use in food, drugs, and cosmetics; and of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 for use in drugs and cosmetics. The new closing date for the provisional listing of all of these color additives will be April 2, 1985. This postponement will provide additional time for the determination of the applicability of the statutory standard for the listing of color additives to the results of the scientific investigations of FD&C Red No. 3, FD&C Yellow No. 5, FD&C Yellow No. 6, D&C No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36.

DATES: Effective February 1, 1985, the new closing date for FD&C Red No. 3 and its lakes, FD&C Yellow No. 5 and its lakes FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 will be April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Gerad McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of February 1, 1985, for the provisional listing of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in cosmetics and in externally applied drugs and for the provisional listing of the use of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 in food and ingested drugs; of FD&C Yellow No. 6 for use in foods, drugs, and cosmetics; and of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 for use in drugs and cosmetics by a rule published in the **Federal Register** of December 3, 1984 (49 FR 47228). The agency had previously extended the closing dates for these color additives on several occasions. For a full procedural history of the provisional listing of these color additives, see 48 FR 45237 for FD&C Red No. 3, 48 FR 45760 for FD&C No. 5, 49 FR 13344 for FD&C Yellow No. 6, 48 FR 42807 for D&C Red No. 8 and D&C Red No. 9, 48 FR 44773 for D&C Red No. 33, and 49 FR 38935 for D&C Red No. 36.

FDA extended the closing dates for the provisional listing of each of these color additives and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 to permit the consideration of the scientific and legal aspects of the data concerning the safety of their provisionally listed uses. FDA expected that the current closing dates would provide time for the preparation and publication of appropriate regulations in the **Federal Register** regarding the final decision on the petitions for the permanent listing of the aforementioned uses of these color additives and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5.

The review of the data relevant to the provisionally listed uses of FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes, FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 has required more time than anticipated, however. Additional time is still needed to determine the applicability of the statutory standard for listing color additives to D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, D&C Red No. 36, and FD&C Yellow No. 6, as well as to FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes.

This postponement will provide additional time for the preparation and publication of the appropriate **Federal Register** documents setting forth the decision on the petitions for the permanent listing of FD&C Red No. 3 and FD&C Yellow No. 5 for use in coloring cosmetics and externally applied drugs and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in coloring food and ingested drugs; for the permanent listing of FD&C Yellow No. 6 for use in food, drugs, and cosmetics; and for the permanent listing of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 for use in coloring drugs and cosmetics. The continued use of these color additives for the short time needed for a fully coordinated review of the data and for the perparation of the **Federal Register** documents will not pose a hazard to the public health.

Since the last time that the provisional listing was extended, FDA received a petition from Public Citizen Health Research Group that asks the agency to ban the use of these color additives. This petition is currently under review. This postponement will provide additional time for consideration of this petition.

Because of the short time until the February 1, 1985 closing date, FDA concludes that notice and public procedure on these amendments are impracticable, and that good cause exists for issuing this postponement as a final rule. This final rule will permit the uninterrupted use of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, D&C Red No. 36, and FD&C Yellow No. 6, as well as FD&C Red No. 3 and FD&C

Yellow No. 5 and their lakes, until April 2, 1985. To prevent any interruption in the provisional listing of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, D&C Red No. 36, and FD&C Yellow No. 6, as well as FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes, and in accordance with 5 U.S.C. 553(d)(1) and (3), this regulation is being made effective on February 1, 1985.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Food, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives*, by revising the closing dates for "FD&C Yellow No. 5," "FD&C Yellow No. 6," and "FD&C Red No. 3" in paragraph (a) to read "April 2, 1985" and by revising the closing dates for "D&C Red No. 8," "D&C Red No. 9," "D&C Red No. 33," and "D&C Red No. 36" in paragraph (b) to read "April 2, 1985."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing*, by revising the closing dates for "FD&C Yellow No. 5," "FD&C Yellow No. 6," and "FD&C Red No. 3" "D&C Red No. 8," "D&C Red No. 9," "D&C Red No. 33," and "D&C Red No. 36" in paragraph (d) to read "April 2, 1985" and by revising the closing dates for "FD&C Red No. 3" and "D&C Red No. 33" in paragraph (e) to read "April 2, 1985."

Effective date. This final rule is effective February 1, 1985.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c) and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: January 17, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–2599 Filed 1–31–85; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 175 and 176

[Docket Nos. 79F–0451 and 79F–0452]

Indirect Food Additives; Adhesives and Components of Coatings; Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a mixture containing 5-chloro-2-methyl-4-isothiazolin-3-one, 2-methyl-4-isothiazolin-3-one, and magnesium nitrate as an antimicrobial agent for polymer latex emulsions in adhesives and in paper coatings which contact food. This action responds to two petitions filed by the Rohm and Haas Co.

DATES: Effective February 1, 1985; objections by March 4, 1985.

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

FOR FURTHER INFORMATION CONTACT: George H. Pauli, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In notices published in the **Federal Register** of January 29, 1980 (45 FR 6651) and February 22, 1980 (45 FR 11911), FDA announced that two petitions (FAP 9B3446 and FAP 8B3406, respectively) had been filed by the Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105. These petitions propose, respectively, that § 175.105 (FAP 9B3446; Docket No. 79F–0452) and § 176.170 (FAP 8B3406; Docket No. 79F–0451) (21 CFR 175.105 and 176.170) be amended to provide for the safe use of a mixture containing 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one as a preservative (antimicrobial agent) for polymer latex emulsions in adhesives and for polymer latex emulsions to coat paper which contacts food.

In an amended filing notice in the **Federal Register** of June 15, 1982 (47 FR 25773), FDA announced that these petitions also propose that the regulations provide for the safe use of magnesium nitrate as a component of the formulation.

The active ingredients in this additive and the components of safety concern are the two isothiazolone compounds. For an antimicrobial additive with an estimated dietary exposure such as this additive (14 parts per billion), the agency ordinarily requires, at a minimum, a subchronic toxicity study in a rodent with in utero exposure and a subchronic toxicity study in a nonrodent. These studies and some additional data on teratology and mutagenicity were submitted in support of the additive.

Based on the 90-day subchronic feeding studies in rats and dogs and teratology studies in rats and rabbits, the agency has established an acceptable daily intake of 0.24 milligram per person per day for these active ingredients. The agency has estimated that cumulative dietary exposure to these ingredients resulting from the proposed use of the food additive and the currently regulated use as a slimicide under §176.300 (21 CFR 176.300) will not exceed 0.04 milligram per person per day.

Although the food additive has not been shown to induce cancer, during the review of this petition the petitioner informed FDA that it had discovered the presence of a carcinogenic impurity, dimethylnitrosamine (DMNA), as a reaction byproduct at very low levels in the additive mixture. (Residual amounts of reactants, byproducts, and manufacturing aids are commonly found as contaminants in all chemical products, even in highly purified reagent grade chemicals, including many food additives.) The petitioner developed analytical methods to measure the DMNA at low concentrations and developed a new manufacturing process using a specific reactant that limited the presence of DMNA to concentrations that ranged from 0.1 to 0.8 part per million (ppm) of the additive in 39 commercial batches analyzed. The additive itself would be used only in small amounts in the paper coating latex or adhesive.

Under section 409(c)(3)(A) of the Federal Food, Drug, and Comsetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless the data presented to FDA establish that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 was explained in the legislative history of that provision. "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." H.R. Rept. No. 2284, 85th Cong., 2d Sess. 1 (1958). This definition of safety has been incorporated into FDA's food additive

regulations (21 CFR 170.3(i)). The anticancer or Delaney Clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to list a use of a food additive that contained or was suspected of containing minor amounts of a carcinogenic chemical, even if the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical but have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though that color additive contains a carcinogenic constitutent.

Since that decision, FDA has approved the use of other color additives and food additives, on the same basis. FDA fully explained the scientific, legal, and policy underpinnings for those decisions in the advance notice of proposed rulemaking on a policy for regulating carcinogenic chemicals in food and color additives, which was published in the **Federal Register** of April 2, 1982 (47 FR 14464). In brief, the agency believes that the Delaney anticancer clause is not triggered unless the food additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer but that contains a carcinogenic constituent may properly be evaluated under the general safety clause of the statute, using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

Because 5-chloro-2-methyl-4-isothiazolin-3-one, 2-methyl-4-isothiazolin-3-one, and magnesium nitrate have not been shown to cause cancer, the anticancer clause does not apply to this additive mixture. FDA has evaluated the safety of this additive under the general safety clause, using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemical that may be present as an impurity in the additive, and has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures used are similar to the methods used to examine the risk associated with the presence of minor carcinogenic impurities in the additives containing carcinogenic impurities evaluated earlier. This risk evaluation of a carcinogenic constituent consists of two parts: (1) Assessment of the probable exposure to the constituent from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassay to the conditions of probable exposure to humans.

FDA has calculated the total exposure to DMNA that would be expected in the U.S. population from the petitioned uses of this antimicrobial agent. As noted above, the calcium salt of a mixture containing 5-chloro-2-methyl-4-isothiazolin-3-one and 2-methyl-4-isothiazolin-3-one is already regulated under § 176.300 as a slimicide used in the manufacture of paper and paperboard that contacts food. Exposure from this regulated use has also been included in the estimate.

FDA made several worst-case assumptions in these calculations. The agency assumed 100 percent migration of the additive into food and has assumed an initial nitrosamine level that is the maximum concentration expected (1 ppm DMNA), not the average level, which would be lower. To simulate storage conditions, the agency further assumed that there could be a threefold increase of nitrosamine with time.

Combining the two petitioned uses with the regulated use of the antimicrobial agent, FDA calculates that the total concentration of DMNA in the daily diet would be less than 0.18 part per trillion (ppt). Assuming a daily diet containing 3 kilograms, the estimated daily intake of DMNA would be less than 0.54 nanogram per person per day.

The carcinogenicity of DMNA has been well recognized since 1956, after the discovery by Magee and Barnes (*British Journal of Cancer*, 10:114–122, 1956) that it is a liver carcinogen in the rat. Since then, more than a dozen studies in the rat, mouse, and other species have been published that confirmed its carcinogenicity. However, the majority of these studies involved the administration of the compound to animals for a short period of time (a few months to less than a year) and then maintaining the animals until death. Some of the studies involved only one sex of animals and/or a single dose. Therefore, these studies are not suitable for risk assessment.

One study, however, was performed on rats (both sexes) in which DMNA was fed the entire lifetime of the rats (120 weeks) at several dose levels (2 to 50 ppm in the diet) (Terracini, B., P.N. Magee, and J.M. Barnes, *British Journal of Cancer*, 21:559–565, 1967). This study was selected for risk assessment.

In estimating the risk from exposure to DMNA, FDA drew upon an assessment performed by the Committee on Nitrite and Alternative Curing Agents in Food of the National Academy of Sciences/National Research Council (NAS/NRC) on the risk to human health of exposure to DMNA (The Health Effects of Nitrate, Nitrite, and *N*-Nitroso Compounds, Part 1 of a 2-Part Study by the Committee on Nitrite and Alternative Curing Agents in Food, Assembly of Life Sciences, National Academy Press, Washington, DC, 1981). The Committee based its analysis on the study by Terracini, et al. They used three different models by which they estimated daily doses of DMNA corresponding to specific levels of risk of liver tumors in rats. Their most conservative model was the one-hit linear model with dosage data expressed as a concentration in the total diet. This procedure is not likely to underestimate the actual risk from very low doses of the nitrosamine.

Using this one-hit linear model, FDA estimates that the upper limit individual lifetime risk to 0.18 ppt DMNA is 1 in 200 million. Because the agency does not expect the exposure to DMNA to exceed 0.18 ppt from the proposed uses of the additive, FDA concludes that there is a reasonable certainty of no harm from the petitioned uses of the additive.

FDA considered two approaches to ensure that each batch of the additive not contain unacceptable amounts of DMNA: Establishing specifications for DMNA in the regulation for this additive, or establishing requirements for a sepcific manufacturing process that would minimize formation of impurities of particular toxicological concern. The petitioner provided data on impurity levels in several batches of the additive manufactured by two different processes. The agency has concluded that specifying the manufacturing

process for the additive is the more effective way of limiting the amount of DMNA that may be present in the additive, because batches of the additive produced by this process showed consistently low impurity levels. Moreover, the agency has found the available analytical method for detecting DMNA in the additive to be unreliable for routine use as a regulatory enforcement method. Therefore, to assure that future batches of the additive do not contain excessive amounts of DMNA, FDA is specifying a key reactant to minimize formation of the impurity.

For the reasons discussed briefly above and discussed fully in the administrative record, and having evaluated data in the petition and other relevant material, FDA concludes that the proposed use of the food additive is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(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 Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection. Among the documents that the agency has relied on are the following:

1. Memorandum, J. Khalsa, Food Additives Evaluation Branch, to G. Pauli, Petitions Control Branch, April 1, 1980 (toxicity data).
2. Memorandum, C. Lin, Food Additives Evaluation Branch to R. Lorentzen, Cancer Assessment Committee, June 11, 1982, and June 24, 1982 (risk evaluation).
3. Memorandum, P. Schwartz, Food Additive Chemistry Evaluation Branch, to J. Herrman, Petitions Control Branch, September 20, 1983 (manufacturing process).
4. Memorandum, M. Flood, Food Additive Chemistry Evaluation Branch, to G. Pauli, Petitions Control Branch, November 7, 1983 (final estimated daily intake).
5. Memorandum, M. van Gemert, Food Additives Evaluation Branch, to J. Herrman, Petitions Control Branch, August 21, 1984 (final toxicology evaluation).

The agency has previously considered the potential environmental effects of the regulation as announced in the notice of filing published in the **Federal Register**. FDA has not received any new information or comments that would alter its previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

List of Subjects

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

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), Parts 175 and 176 are amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. Part 175 is amended in § 175.105(c)(5) by alphabetically inserting a new item in the list of substances, to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * *	* *
5-Chloro-2-methyl-4-isothiazolin-3-one (CAS Reg. No. 26172-55-4) and 2-methyl-4-isothiazolin-3-one (CAS Reg. No. 2682-20-4) mixture at a ratio of 3 parts to 1 part, manufactured from methyl-3-mercaptopropionate (CAS Reg. No. 2935-90-2). The mixture may contain magnesium nitrate (CAS Reg. No. 10377-60-3) at a concentration equivalent to the isothiazolone active ingredients (weight/weight).	For use only as an antimicrobial agent in polymer latex emulsions.
* * *	* *

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

2. Part 176 is amended in § 176.170(b)(2) by alphabetically inserting a new item in the list of substances, to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
* * *	* *
5-Chloro-2-methyl-4-isothiazolin-3-one (CAS Reg. No. 26172-55-4) and 2-methyl-4-isothiazolin-3-one (CAS Reg. No. 2682-20-4) mixture at a ratio of 3 parts to 1 part, manufactured from methyl-3-mercaptopropionate (CAS Reg. No. 2935-90-2). The mixture may contain magnesium nitrate (CAS Reg. No. 10377-6-3) at a concentration equivalent to the isothiazolone active ingredients (weight/weight).	For use only as an antimicrobial agent for polymer latex emulsions in paper coatings at a level not to exceed 50 parts per million (based on isothiazolone active ingredients) in the coating formulation.
* * *	* *

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before March 4, 1985 submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, 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 identified 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 shall become effective February 1, 1985.

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

Dated: January 24, 1985.

Joseph P. Hile,

Associate Commissoner for Regulatory Affairs.

[FR Doc. 85–2601 Filed 1–31–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 205, 207, 213, 220, 221, 232, 234, 242, 244, 250, 251, and 255

[Docket No. R-85-1222; FR-1982]

Eligibility of Property in States and Territories for FHA-Mortgage Insurance

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

ACTION: Final rule.

SUMMARY: This final rule provides for the further implementation of a recent statutory amendment that makes mortgages on property located in American Samoa eligible for mortgage insurance. It expressly identifies the specific jurisdictions in which HUD's various mortgage insurance programs are available, including certain United States territories and possessions. In several of the affected parts, the term "State" has been defined to include these territories and possessions.

EFFECTIVE DATE: March 13, 1985.

FOR FURTHER INFORMATION CONTACT: James Hamernick, Director, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-6500. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rule supplements the final rule published in the **Federal Register** of March 30, 1984 (49 FR 12693). That rule implemented, among other sections, section 407 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983), by adding American Samoa to the list of eligible jurisdictions to which HUD's loan and mortgage insurance authorities in Titles I and II of the National Housing Act apply. In that rule, 24 CFR Parts 201 and 208 were amended to identify specifically all jurisdictions in which HUD-approved or HUD-insured property may be located. In addition, Parts 201, 203, 204, 205, 232, 234, 242, 244, and 250 were revised to include American Samoa in the definition of "State" each place it appears. (In addition to the several States, the term includes Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.)

This final rule provides for the further implementation of Section 407, by clarifying that property located in U.S. territories and possessions listed in the definition of "State" is eligible for all of HUD's mortgage insurance programs. The Department has found that, even though most of its program regulations include this definition, there is not a clear connection between the definition and provisions establishing the eligibility of property under each insurance program. In many cases, the definition appears in a different subpart from the eligibility requirements, with the "Definitions" section applicable only to the subpart in which it appears.

The revisions needed to make these U.S. territories and possessions eligible for the Department's insurance programs have been carried out in several different ways, depending on the structure of the current regulations. Parts 213 and 234, which contain "Definitions" sections, have been revised by adding a definition for the term "State" and by referencing that definition in the sections on "Eligibility of property". The "Eligibility of property" sections in Pars 205, 232, 242, and 244 have been revised to refer to the definition of "State" which appears in another section of the same subparts. In Parts 207, 221, 250, and 255, the "Eligibility of property" sections have been revised to identify specifically those jurisdictions that are eligible for the particular mortgage insurance program, since the "Definitions" sections in some of these parts are not applicable to the sections on "Eligibility of property". In Part 220, Subpart A and Part 221, Subpart A, this revision is also effected by making § 203.40 "Location of property" applicable to these Subparts.

As a matter of policy, the Department submits most of its rulemakings for public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that good cause exists for publishing this document as a final rule. Public procedure is believed to be unnecessary because the revisions are being made for the sole purpose of making clear the hitherto implicit fact that only mortgages on property located in a State (as defined in the rule) are eligible for insurance. These revisions leave unchanged the rights and responsibilities of program beneficiaries or users.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule clarifies existing practice without changing the economic impact on a substantial number of small entities.

The rule was listed as Item 62 in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41084) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10278, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An 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 Catalog of Federal Domestic Assistance program numbers are 14.116, 14.120, 14.122, 14.124, 14.125, 14.128, 14.129, 14.133, 14.134, 14.135, and 14.137.

List of Subjects

24 CFR Part 205

Community facilities, Mortgage insurance, Land development.

24 CFR Part 207

Mortgage insurance, Rental housing, Manufactured 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 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 242

Hospitals, Mortgage insurance.

24 CFR Part 244

Health facilities, Mortgage insurance.

24 CFR Part 250

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

24 CFR Part 251

Mortgage insurance, Coinsurance of multifamily mortgages.

24 CFR Part 255

Mortgage insurance.

Accordingly, the Department amends 24 CFR Parts 205, 207, 213, 220, 221, 232, 234, 242, 244, 250, 251, and 255 as follows:

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT [TITLE X]

1. Section 205.42 is amended by revising the introductory text to read as follows:

§ 205.42 Eligibility of property.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 205.1(m). The mortgage shall be on real estate held:

* * * * *

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

2. In § 207.23, the introductory text of paragraph (a) is revised to read as follows:

§ 207.23 Eligibility of property.

(a) The mortgage, to be eligible for insurance, shall be on property located in a State, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands. The mortgage shall be on real estate held:

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

3. Section 213.1 is amended by adding a new paragraph (o) to read as follows:

§ 213.1 Definitions.

* * * * *

(o) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

4. In § 213.40, the introductory text of paragraph (a) is revised to read as follows:

§ 213.40 Eligibility of property.

(a) The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 213.1. The mortgage shall be on real estate held:

* * * * *

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

5. Section 220.1 is amended by removing from the list in paragraph (a) the reference to "203.40 Location of property."

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

§ 221.1 [Amended]

6. Section 221.1 is amended by removing from the list in paragraph (a) the reference to "203.40 Location of property."

7. In § 221.544, the introductory language of paragraph (a) is revised to read as follows:

§ 221.544 Eligibility of property.

(a) The mortgage, to be eligible for insurance, shall be on property located in a State, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands. The mortgage shall be on real estate held:

* * * * *

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

8. Section 232.25a is amended by revising the introductory text to read as follows:

§ 232.25a Eligibility of property.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 232.1(h). The mortgage shall be on real estate held:

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

9. Section 234.1 is amended by adding a new paragraph (n) to read as follows:

§ 234.1 Definitions used in this subpart.

* * * * *

(n) "State" includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

10. A new § 234.63 is added, immediately following the undesignated center heading "Eligible Properties", to read as follows:

§ 234.63 Location of property.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 234.1.

11. In § 234.520, the introductory text of paragraph (a) is revised to read as follows:

§ 234.520 Eligibility of property.

(a) The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 234.505. The mortgage shall be:

* * * * *

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

12. Section 242.87 is amended by revising the introductory text to read as follows:

§ 242.87 Property requirements.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 242.1. The mortgage shall cover real estate in which the mortgagor has one of the following interests:

* * * * *

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES [TITLE XI]

13. Section 244.120 is amended by revising the introductory text to reads as follows:

§ 244.120 Eligibility of property.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 244.1. The mortgage shall cover real estate in which the mortgagor has one of the following interests:

* * * * *

PART 250—COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

14. In § 250.102, the introductory text of paragraph (a) is revised to read as follows:

§ 250.102 Eligibility of property.

(a) The mortgage, to be eligible for insurance, shall be on property located in a State, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands. The mortgage shall be on real estate held:

* * * * *

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

15. In § 251.501, the introductory text of paragraph (a) is revised to read as follows:

§ 251.501 Mortgage requirements—real estate.

(a) The mortgage, to be eligible for insurance, shall be on property located in a State, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands. The mortgage must be on real estate held:

* * * * *

PART 255—COINSURANCE FOR PRIVATE MORTGAGE LENDERS

16. In § 255.227, the introductory text of paragraph (a) is revised to read as follows:

§ 255.227 Eligibility of property.

(a) The mortgage, to be eligible for insurance, shall be on property located in a State, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, or the Virgin Islands. The mortgage shall be on real estate held:

* * * * *

(Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); sec. 407, Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983))

Dated: January 18, 1985.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 85-2630 Filed 1-31-85; 8:45 am]

BILLING CODE 4210-27-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Handling of Employment Discrimination Charges

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges, within their jurisdictions, filed with the Commission. Publication of this amendment effectuates the designation of the Paducah, Kentucky Human Rights Commission as a 706 Agency.

EFFECTIVE DATE: February 1, 1985.

FOR FURTHER INFORMATION CONTACT: Hollis Larkins, Equal Employment Opportunity Commission, Office of Program Operations, Special Services Staff, 2401 E Street, N.W., Washington, D.C. 20507, telephone 202/634-6806.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

PART 1601—PROCEDURAL REGULATIONS

Accordingly, Title 29, Chapter XIV of the Code of Federal Regulations, 29 CFR 1601.74(a) is amended by adding in alphabetical order the following agency:

§ 1601.74 Designated and notice agencies.

(a) * * * Paducah, Kentucky Human Rights Commission

* * * * *

(Sec. 713(a) 78 Stat. 265 (42 U.S.C. 2000e 12(a))

Signed at Washington, D.C. this 28th day of January, 1985.

For the Commission.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 85-2631 Filed 1-31-85; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Power Lawnmowers; Amendments

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; amendments.

SUMMARY: In this document OSHA is adding definitions for the terms "sulky type mower" and "deadman control". The definitions for these terms were inadvertently removed from the regulations in a final rule that was published in the **Federal Register** in 1978. OSHA is correcting this situation by explaining the meaning of these terms in § 1910.243 where they are used.

DATE: These amendments are effective on February 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue, NW., Washington, D.C. 20210; Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: A final rule was published in the **Federal Register** on October 24, 1978 (43 FR 49726) revoking certain general industry safety and health standards. An error was made in revoking the definitions for "sulky type mower," § 1910.241(c)(10) and "deadman control," § 1910.241(c)(11). These terms are still used in § 1910.243 and should not have been deleted. The term "sulky type mower" is used in the current standard for power lawnmowers at § 1910.243(e)(1)(i), while the revoked definition for "deadman control" is referenced in the same standard at § 1910.243(e)(3)(vii) and § 1910.243(e)(4)(vi).

These errors have continued to appear in 29 CFR to this date, and it is necessary to issue the appropriate correction at this time. Therefore, OSHA is correcting these errors by explaining the meaning of the terms "sulky type mower" and "deadman control" in the above mentioned paragraphs of § 1910.243 in which those terms are used.

OSHA has determined that notice of these corrections and public procedure thereon in accordance with section 6(b) of the OSHA Act (29 U.S.C. 655(b)) are not necessary under section 4(b) of the Administrative Procedure Act (APA) (5

U.S.C. 553), and 29 CFR 1911.5, since the corrections do not change the requirements of the standard. For the same reason, under section 4(d) of the APA (5 U.S.C. 533(d)) and 29 CFR 1911.5, good cause is also found to make these changes effective immediately upon publication in the **Federal Register.**

This document was prepared under the direction of Robert A. Rowland, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

List of Subjects in 29 CFR Part 1910

Occupational safety and health.

Authority: This document is issued under sections 6 and 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 657), section 4 of the Administrative Procedure Act (5 U.S.C. 553), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR 1911.5.

Signed at Washington, D.C., this 22nd day of January 1985.

Robert A. Rowland,

Assistant Secretary.

PART 1910—[AMENDED]

Accordingly, Part 1910 of Title 29 of the Code of Federal Regulations is amended as set forth below:

By revising paragraphs (e)(1)(i), (e)(3)(vii), and (e)(4)(vi) of § 1910.243 to read as follows:

§ 1910.243 Guarding of portable powered tools.

* * * * *

(e) *Power lawnmowers*—(1) *General requirements.* (i) Power lawnmowers of the walk-behind, riding-rotary, and reel power lawnmowers designed for sale to the general public shall meet the design specifications in "American National Standard Safety Specifications for Power Lawnmowers" ANSI B71.1–X1968. These specifications do not apply to a walk-behind mower which has been converted to a riding mower by the addition of a sulky. Also, these specifications do not apply to flail mowers, sicklebar mowers, or mowers designed for commercial use.

* * * * *

(3) * * *

(vii) Wheel drive disengaging controls, except deadman controls, shall move opposite to the direction of the vehicle motion in order to disengage the drive. Deadman controls shall automatically interrupt power to a drive when the operator's actuating force is removed, and may operate in any direction to disengage the drive.

(4) * * *

(vi) Hand-operated wheel drive disengaging controls shall move opposite to the direction of vehicle motion in order to disengage the drive. Foot-operated wheel drive disengaging controls shall be depressed to disengage the drive. Deadman controls, both hand and foot operated, shall automatically interrupt power to a drive when the operator's actuating force is removed, and may operate in any direction to disengage the drive.

[FR Doc. 85–2294 Filed 1–31–85; 8:45 am]

BILLING CODE 4510–26–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 84–603]

Order Revising the Commission's Procedures Allowing the Selection From Among Certain Private Land Mobile Competing Applications Using Random Selection or Lotteries

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an Order delegating authority to the Chief of the Private Radio Bureau to order random selection proceedings in situations where the number of applicants in an area is larger than the number of frequencies available and there are no substantial, material differences between applicants. This action was taken to increase the speed of authorization of radio communication systems.

EFFECTIVE DATE: February 1, 1985.

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

FOR FURTHER INFORMATION CONTACT: W. Riley Hollingsworth, Private Radio Bureau, (202) 632–7125.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 1

Practice and procedure.

Order

In the matter of revision of the Commission's procedures allowing the selection from among certain private land mobile competing applications using random selection or lotteries.

Adopted: December 4, 1984.

Released: February 1, 1985.

By the Commission.

1. On May 27, 1983, The Commission amended its rules to allow the use of random selections or lotteries instead of comparative hearings to grant applications where it is determined that this will be the most efficient method of allocation, and where there are no substantial material differences among applicants. *Second Report and Order,* Docket 81–768, released May 27, 1983.

2. The Commission has conducted such random selection proceedings in Detroit, Cleveland, New York, Philadelphia, Washington, D.C., Baltimore, Chicago, Houston and Dallas using this lottery procedure. Under the procedure set forth in the *Second Report and Order,* the Commission issues a Public Notice listing all timely filed applications in the area where the number of applicants exceeds the number of channels available. The Private Radio Bureau receives notices of appearance and evaluates applicant's claims for certain comparative points. The Bureau presents an agenda item to the Commission listing the applicants. The Commission then decides whether to order a lottery. If it determines to employ a lottery, it issues an order to that effect. The order also lists dismissals that may have been made, gives explanations and orders routine grants for those applicants whose comparative points enable a grant without a lottery.

3. After analyzing our experience with this first round of lotteries to authorize the newly released 800 MHz channels, the Commission is persuaded that a time savings of over a month would result from our granting delegated authority to the Private Radio Bureau to issue lottery orders instead of its having to bring these to the Commission for adoption. This would increase speed of service to the applicants and thus would benefit both the applicants and the general public, which benefits from speedier authorization of radio communications systems.

4. The procedures for handling the issuance of lottery orders are hereby revised to grant the Chief of the Private Radio Bureau delegated authority to order random selection proceedings in situations where the number of applicants in an area is larger than the number of frequencies available and there are no substantial material differences between applicants. 47 U.S.C. 154(i), 155(c) and 303(r). Since this action relates to agency procedure, we conclude that prior notice and public comment thereon are not required. 5 U.S.C. 553(b)(3)(A)

5. Accordingly, it is ordered, that effective February 1, 1985, Part 1 of the Commission's Rules, 47 CFR Part 1, IS AMENDED as shown in the attached Appendix. Authority for this action is set forth in sections 4(i), 5(a), 5(c) and

303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(a) 155(c) and 303.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Part 1—Practice and Procedure, § 1.972 paragraph (c) is revised to read as follows:

§ 1.972 Grants by random selection.

* * * * *

(c) If there are mutually exclusive applications for an initial license for stations subject to Part 81 or Part 87, or if there are more applications for initial license in Part 90 or Part 94 than can be accommodated on available frequencies, the Commission may process the applications pursuant to a system and random selection. Each such random selection shall be conducted pursuant to an order issued by the Private Radio Bureau and under the direction of the Chief of the Bureau.

* * * * *

[FR Doc. 85-2685 Filed 1-31-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 2

[Gen. Docket No. 82-243; FCC 84-556]

Frequency Allocation for a Government and Non-Government Fixed Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission has revised its Rules to provide frequencies at 932–935 MHz and 941–944 MHz for a Government and non-Government fixed service. These frequencies will be used to meet various control, management and monitoring requirements. Existing aural broadcast studio transmitter links and intercity relay stations will be allowed to remain in the 942–944 MHz band.

EFFECTIVE DATE: March 4, 1985.

ADDRESS: Federal Communications Commission, 2025 "M" Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Small; Office of Science and Technology, 2025 "M" Street, NW., Washington, DC 20554 (202) 653-8169.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 2

Frequency allocations, Radio, Communications equipment.

First Report and Order

In the matter of amendment of Part 2 of the Commission's Rules to provide for an allocation of 6 MHz to the Government and the non-Government for fixed service usage; Gen. Docket No. 82-243.

Adopted: November 21, 1984.
Released: January 18, 1985.

By the Commission: Commissioner Rivera dissenting in part and issuing a statement at a later date.

Introduction

1. This *Report and Order* amends Part 2 of the Commission's Rules to allocate frequencies in the 932–935 MHz and 941–944 MHz band for use by the Government and non-Government fixed services. This is in response to a request by the National Telecommunications and Information Administration (NTIA) to provide spectrum in the 900 MHz range for accommodation of Federal Government low capacity fixed systems. In making this allocation, the Commission has also provided for similar systems operated by the private sector and for the continued operation of existing broadcast auxiliary stations at 942–944 MHz. Issues concerning technical standards and licensing/coordination procedures will be treated in a further proceeding.

Background

2. On March 14, 1983, the Commission released a *Further Notice of Proposed Rule Making* (*Further Notice*, 48 FR 12267) in this proceeding, which proposed to reallocate six megahertz of land mobile reserve spectrum at 932–935 MHz and 943–946 MHz to a Government and non-Government fixed service. In the initial *Notice of Proposed Rule Making* (*Notice*, 47 FR 23491), released May 10, 1982, we had proposed the 899–902 MHz and 938–941 MHz bands for this purpose, but the proposal was modified in 1983 due to a new proposal to use the 898–902 MHz and 937–941 MHz bands for a personal radio service (Gen. Docket No. 83-26).

3. The proceeding was initiated when the National Telecommunications and Information Administration (NTIA) advised the Commission of a Federal Government requirement for additional spectrum for low capacity, fixed systems. NTIA indicated that the Government currently uses small segments between 27.54–50 MHz and the bands 162.0125–173.2 MHz, 173.4–174.0 MHz, and 406.1–420 MHz to meet the requirements of its land mobile and low capacity fixed systems. Assignment of frequencies in these bands to meet new requirements has become increasingly difficult, and NTIA anticipates that spectrum will not be available in the future to meet the Government's need for these services. Accordingly, NTIA requested access to approximately six megahertz of spectrum for low capacity (6–12 channel), fixed systems to meet various control, management and monitoring requirements, many of which are in rural areas. These include the following:

- Control, protection, management and monitoring of electric power-generating and transmission systems by the Department of Energy and the Tennessee Valley Authority.
- Vessel traffic service and interconnection of Coast Guard facilities along rivers, coastal areas and the Great Lakes for port management, law enforcement, safety, search and rescue.
- Control, management and monitoring of water transmission and storage facilities for both irrigation and potable water supplies by the Department of Interior.
- Management and control of locks on navigable rivers by the Army Corps of Engineers.
- Natural resource management and environmental protection by the Department of Interior.
- Flood warning and flood water monitoring by the Army Corps of Engineers.
- Production, management, storage control and monitoring of national petroleum and natural gas reserves by the Department of Energy.
- Non-tactical data transmission and management communications at various Army test sites, ranges and bases.
- Control, management and communications with remotely located aeronautical navigation sites by the Federal Aviation Administration.
- Interconnection for emergency preparedness, law enforcement, protective, and custodial land mobile radio systems in metropolitan and rural areas.

NTIA suggested the Government will be able to share spectrum with non-Government users who also have similar fixed service requirements.

4. In the *Notice*, we tentatively concluded that using spectrum outside of the 900 MHz range to satisfy these requirements was not feasible and that a 900 MHz allocation was therefore necessary. We also tentatively concluded that this allocation could be shared between Government and non-Government fixed services. Comments were requested as to what types of fixed services could most suitably share the

proposed allocation, with the feasibility of Aural Broadcast Studio-to-Transmitter Link (STL) and Intercity Relay (ICR) usage specifically mentioned. Comments were also requested as to any alternatives to the proposed allocation, and as to what procedural and technical rules should be promulgated.

Discussion

5. A total of twenty-six parties filed comments or reply comments to the *Notice* or *Further Notice*. Of these twenty-six, five parties generally favored the reallocation, nineteen generally opposed it, and two were neutral. The five who generally supported it cited a need for additional spectrum for fixed services, while the nineteen who opposed it stated that a need showing had not been adequately made, and that even if there were a need, it could be satisfied in another band, thus preserving reserve spectrum for critical land mobile requirements. A comment summary is attached in Appendix A.

6. Despite this general opposition to the proposed reallocation, however, we believe that there are compelling reasons to proceed with it. First, several Government Agencies have certified to NTIA that they have a shortage of fixed spectrum, and several parties who opposed the reallocation nonetheless acknowledged that there may be a need for additional non-Government fixed spectrum.* In comments filed to the *Further Notice*, NTIA stated that it is performing a multi-year study of Government spectrum use, but that delaying the decision in this proceeding until the study is completed is unwarranted and could prevent Federal Agencies from efficiently performing their missions.

7. Second, several bands outside of the upper land mobile reserve range were considered by NTIA for satisfaction of the fixed requirement but were rejected for various reasons. These bands included 608–614 MHz, 806–896 MHz, 902–928 MHz, 947–952 MHz, 952–960 MHz, 1427–1435 MHz, 1710–1850 MHz, 2110–2130 MHz paired with 2160–2180 MHz, 2130–2150 MHz paired with 2180–2200 MHz, and 23 GHz. Briefly, the 608–614 MHz band was rejected due to radio astronomy use; the 806–896 MHz band was rejected due to current and anticipated future private and cellular mobile use; the 902–928 MHz band was rejected due to Government Radiolocation use and a substantial amount of Industrial, Scientific, and Medical equipment; the 947–952 MHz band was rejected due to the operation of large numbers of STL and ICR stations; the 952–960 MHz band was rejected due to the large number of private operational-fixed microwave users; the 1427–1435 MHz band was rejected due to military airborne use; the 1710–1850 MHz band was rejected due to substantial use by Government fixed and mobile services; the 2110–2130 MHz band paired with 2160–2180 MHz was rejected due to substantial common carrier point-to-point microwave and control and repeater use; the 2130–2150 MHz band paired with 2180–2200 MHz was rejected due to private microwave use; and the 23 GHz band was rejected because of its limited range of coverage and because its channel capacities are much greater than required for the foreseen applications.

8. Third, in view of the other allocations and proposals made today in other proceedings, the 932–935 MHz and 941–944 MHz bands being adopted for the fixed service are not particularly useful for private and common carrier two-way mobile services. With the technology currently used in these services, 30–45 megahertz of frequency separation between base and mobile units is required, rather than the nine megahertz of separation that these two bands provide. Thus, although it is true that our proposal would reallocate six megahertz of spectrum from land mobile to fixed services, we do not believe that this spectrum could be productively used in mobile applications.

9. Fourth, the 942–944 MHz band is currently used by STL and ICR, which are point-to-point systems operating in accordance with NG64. If we proceed with this reallocation, these broadcast auxiliary users can be grandfathered without degrading the quality of service to the new fixed users. On the other hand, if we were to allow mobile use of this band, it is likely that STL and ICR would have to relocate to prevent degradation of the mobile service. Finding spectrum for such relocation was the purpose for initiating Gen. Doc. 82–335 and by this action herein the need for new spectrum in the near term for STL and ICR is alleviated.

10. Fifth, NTIA, like the Commission, is faced with substantial pressures regarding land mobile requirements, and these have an impact on this proceeding. The two Government land mobile bands, 162–174 MHz and 406.1–420 MHz, are becoming congested. Because of historical usage patterns, the latter also has a number of low-capacity, fixed systems interspersed throughout the band. NTIA's long range planning intentions include removal of these fixed operations to the proposed 900 MHz spectrum and restriction of the 400 MHz band to land mobile operations exclusively. It intends to pursue the application of narrowband land mobile technologies (e.g., ACSB, narrowband FM) in the band. Continued fixed operations in this band will result in inefficient spectrum use because protecting fixed stations will limit mobile use of the band, and it will inhibit achievement of gains promised by narrowband technology.

11. Finally, we note that the Executive Branch in recent years has made available to the non-Government sector a substantial amount of spectrum in various proceedings (See Appendix B). By contrast, the most recent reallocation from the non-Government sector to the Government sector was in April 1958, when spectrum was transferred to meet national defense requirements. Thus, recent joint FCC/NTIA cooperative efforts have heavily favored non-Government users. In fact, the lower band and a portion of the upper band that we are reallocating in this proceeding were originally part of the 890–942 MHz Government Radiolocation band, which was reduced domestically to 902–928 MHz in 1970 to permit non-Government mobile user.

12. For the above reasons, the Commission believes that reallocating the 932–935 MHz and 941–944 MHz bands to a Government and non-Government fixed service is in the public interest. The lower band is currently unutilized, and rears that compatibility problems could arise in Canadian border areas have been allayed with Canada's current plans not to proceed with a general mobile radio service in the 933–935.5 MHz band. The upper band that we are reallocating to the fixed service represents a shift from our proposal in the *Further Notice*, but it is necessary in the context of other actions that we are taking today and does not represent a substantive change for the service. At the time of the *Further Notice*, we concurrently adopted a *Notice of Proposed Rule Making* in General Docket No. 83–30, which proposed that the 896–898 MHz and 941–943 MHz bands be reallocated for an air-to-ground telephone service. However, we are today declining to adopt this proposal; in General Docket No. 84–1233, we are proposing that the 896–902 MHz and 945–941 MHz bands

*We note that responsibility for determining the Government's need for additional spectrum lies with the Executive Branch, not the Commission. *See Bendix Aviation Corp., Bendix Div. v. FCC*, 272 F. 2d 533, 538, 542 (DC Cir. 1959). Accordingly, in reaching our decision, we have relied upon NTIA's representations that there is a shortage of Government spectrum.

be used by the private land mobile radio services, and in General Docket 82-335, we are reallocating the 944-947 MHz band to broadcast auxiliary services. Therefore, we are relocating the upper band of the new fixed service to 941-944 MHz between the upper band of the proposed private services and the broadcast auxiliary band.

13. This minor change does not require public comment. The only difference for fixed service users will be that the frequency separation between transmitters and receivers will be nine, rather than eleven, megahertz. Such a small change in frequency separation should have an insignificant impact on equipment cost. Another impact of this change is that since there are a small number of existing broadcast auxiliary users at 942-944 MHz, we must either grandfather or remove them. As already mentioned at paragraph nine *supra*, we believe that sharing with Government/non-Government fixed services is feasible. We believe grandfathering is preferable to STL/ICR than relocating to new bands and, therefore, we are taking this course of action today in Docket 82-335.

14. Additionally, we intend to allow all compatible two-way Government and non-Government services to use the new fixed bands. This means that non-Government fixed broadcast, common carrier, and private users will be eligible to share the bands (under Parts 74, 21, and 94 of our Rules). Given this type of diversified use, we believe that the new bands will be fully utilized by two-way services.

15. Due to the diversified type of use contemplated, however, we believe that it would be premature to issue procedural and technical rules at this time. NTIA stated that the current method of national frequency coordination in shared Government/non-Government bands should be followed in the new fixed bands and that the technical standards in Part 94, Subpart C, of the Commission's Rules appear to be applicable. Although we tend to agree with NTIA on both issues, we believe that it is important to allow all affected parties the opportunity to comment on these issues. We will, therefore, initiate a further proceeding to explore procedural and technical rules, thereby inviting comments from all interested parties on the specific rules and regulations to access these bands. Neither Government nor non-Government users will be allowed access to the bands until final rules have been issued.

Final Regulatory Analysis

16. Pursuant to 5 U.S.C. 601 *et seq.*, an Initial Regulatory Flexibility Analysis was incorporated in paragraph 14 of the *Notice* and paragraph 12 of the *Further Notice*. In paragraph 15 of the *Notice* and paragraph 13 of the *Further Notice*, written comments on the proposals in these documents, including the Regulatory Flexibility Analysis, were requested. No comments on this Analysis were received.

A. Need For and Objective of Rule

17. The Commission is establishing new frequency bands for a Government and non-Government fixed service. Bands currently used for this purpose are considered by NTIA and some non-Government users to be inadequate to meet growing demand.

B. Summary of Issues Raised in Comments on Initial Analysis

18. No comments were received specifically concerned with the Initial Regulatory Flexibility Analysis in this proceeding. Moreover, our action today imposes no new reporting or record keeping requirements on fixed service users.

C. Significant Alternatives

19. As detailed in paragraph seven above, several other frequency bands were considered for satisfaction of the fixed requirement. However, for reasons stated above, none of these alternative bands were deemed adequate.

Administrative

20. Pursuant to the above and under the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, it is ordered that Part 2 of the Commission's Rules and Regulations is amended as specified in Appendix C. These amendments become effective March 4, 1985.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Summary of Comments

Nineteen parties filed comments or reply comments to the original *Notice*, and eleven of these same parties filed comments or reply comments to the *Further Notice*. In addition, seven new parties filed comments or reply comments to the *Further Notice*, for a total of eighteen parties filing to the *Further Notice*, and twenty-six filing to one or both *Notices*. Of these twenty-six, five parties generally favored the reallocation, nineteen generally opposed it, and two were neutral.

The five who favored the reallocation cited a need for additional spectrum for fixed services. One of these—the *Utilities Telecommunications Council*—said that there is an especially strong need for more spectrum for non-Government fixed services. However, UTC stated that it also favors additional spectrum for non-Governemnt land mobile services, and would not be averse to a higher band for fixed services if a suitable one could be located.

The *National Telecommunications and Information Administration* said that there is an especially strong need for more spectrum for Government fixed service. NTIA stated that several Government agencies have indicated a need for additional fixed spectrum, and that the need has now become more pressing due to new emergency preparedness and feeder link requirements. NTIA said that bands outside the 900 MHz range have been evaluated and found to be unacceptable for a fixed service, and that a 900 MHz allocation is a necessity. NTIA further states that Government requirements cannot be met by commercial services because of cost considerations, performance requirements, and security considerations. NTIA also stated that the Commission does not have the legal authority to reject the certifications of Federal agencies that they have complied with all Executive Branch regulations in determining that they have a legitimate spectrum requirement. Finally, NTIA stated that it is performing a multiyear study of Government Spectrum use and that delaying the decision in this proceeding until the study is completed is unwarranted and could have damaging effects on Federal agencies.

M/A-COM, Inc. stated that there is a need for more spectrum for both non-Government and Government fixed services. However, M/A-COM stated that the traditional approach to frequency coordination in shared Government/non-Government bands is cumbersome and should be replaced in the new fixed bands by typical private coordination procedures, wherein all users are listed in the data bases or private frequency coordinators. Otherwise, according to M/A-COM, the coordination process will hinder efficient private use of the spectrum.

RCA Corporation stated that 900 MHz reserve band frequencies are appropriate for a new fixed service, and also recommended a common data base accessible by all applicants. RCA was

concerned that a fixed service not be accommodated in the 902–928 MHz band, which is currently used by a variety of devices, including the RCA Video Disc System.

Radiocall Corporation stated that the proposed allocation could satisfy control and repeater requirements needed to support land mobile operations such as two-way mobile telephone and paging.

The nineteen parties who opposed the reallocation stated that a need showing had not been adequately made, and that even if there were a need, it could be satisfied in another band. The *National Association of Broadcasters, Mosely Associates, Association of Maximum Service Telecasters, Inc.*, and *American Broadcasting Companies, Inc.* all stated that STLs need a new band, and should not be forced to share a band with Government users who have not demonstrated a need. NAB and ABC were particularly alarmed at the Commission's revised proposal (in the *Further Notice*), stating that the 943–946 MHz band was becoming saturated with STL use, and could not be shared with other types of fixed use except in rural areas. AMST stated that no positive action should be taken in this proceeding until NTIA has completed its study of Government spectrum requirements.

The *Central Committee on Telecommunications of the American Petroleum Institute* and the *Special Industrial Radio Service Association, Inc.* both initially favored additional spectrum for fixed users at 900 MHz, but changed their opinions after the *Further Notice* was adopted in conjunction with two other proposals to use the 900 MHz reserve bands. API and SIRSA both stated that there is a need for additional fixed spectrum for private users, but ultimately concluded that the reserve spectrum could be more productively employed by traditional private land mobile users. Each filed consolidated comments in the three 900 MHz proceedings, rejecting any encroachment on the reserve by fixed users or new mobile services, which, they contended, could use existing allocations or higher frequency bands.

The *National Association of Business and Educational Radio, Inc., Telocator Network of America, Rockwell International* and *The County of Los Angeles* all stated that there is a strong need for additional land mobile spectrum, and that it would be illogical to take spectrum from land mobile services and give it to fixed services for which there is no documented need. NABER and The County of Los Angeles said that no allocation should be made until NTIA has completed its study of Government spectrum utilization. NABER also cited the Report on Future Private Land Mobile Telecommunications Requirements, prepared by the Planning Staff of the Private Radio Bureau, as evidence that there would be a substantial shortfall in private land mobile frequencies in the near future. NABER therefore maintained that it was vital that the reserve be held for mobile use. Any fixed needs which can be documented in the future should be met by utilizing spectrum other than the reserve, such as 17–40 GHz, according to NABER. The County of Los Angeles stated that it was concerned that the Government intended to use any new fixed allocation to replace existng low-capacity fixed systems, so that frequencies currently used for that purpose could be used instead for land mobile systems. It maintained that the Commission should ensure that the Government has a legitimate requirement for *new* fixed systems, not merely replacement systems.

The *Land Mobile Communications Council* and the *International Association of Fire Chiefs, Inc.* each filed consolidated comments in the three 900 MHz proceedings, which maintained that any reallocation of spectrum from the land mobile reserve to fixed or new mobile services would reflect a lack of foresight on the Commission's part. LMCC stated that the land mobile community has already exhausted its current frequency allocation in most major urban areas, and will require substantial additional spectrum. In its consolidated reply comments, LMCC stated that NTIA has not made even a threshold showing of Government need for additional fixed spectrum. LMCC also disputed NTIA's contention that the Commission is obligated to accept the certifications of NTIA that there is a need for a reallocation. LMCC said that regulation of non-Government spectrum is within the jurisdiction of the Commission, and the Executive Branch has jurisdiction only on Government frequencies. Finally, LMCC noted that even if NTIA's calculation of future requirements is accepted, most of the need is in rural areas where spectrum above 1 GHz could be shared with non-Government users.

The *General Electric Company* and *Motorola, Inc.* agreed with LMCC's contention, and proposed specific alternative frequency bands for fixed services. GE stated that the 23 GHz band is already allocated on a shared Government/non-Government basis to the Fixed Service, and could meet most, if not all, of the Government requirement for low capacity fixed services. GE contended that this band could be used in a cost-effective manner due to the relaxation of technical regulations brought about by Docket 79-337. Motorola stated that the 1427–1435 MHz band could be used to satisfy both NTIA's purported need and the increasing requirements of STL and Intercity Relay stations. It stated that equipment is available in this band from a number of suppliers at a cost comparable to 960 MHz fixed systems. Motorola further contended that this band is very lightly utilized and could be channelized to provide low capacity operations for both single and multiple hop applications.

The *American Telephone and Telegraph Company* stated that there is no demonstrated need for a new fixed allocation. It said that the only evidence presented for a new allocation is a five-year old NTIA report which does not take account of new spectrum-efficient technologies or budget cuts which have curbed Government growth. AT&T also contended that any Government need which might exist could be served by common carriers or other commercial providers. Finally, AT&T stated that maintenance of the reserve for land mobile purposes is vital to the growth of land mobile communications.

GTE Sprint Communications Corporation was primarily concerned with another 900 MHz proceedng (Docket 83–26, *Creation of an Additional Private Radio Service*), but also offered brief comments in this docket. GTE stated that it would not be spectrally efficient to assign either a fixed or air/ground service at 900 MHz. Rather, GTE suggested, the new personal radio service should receive more than the eight MHz proposed for it, and the other two services should be assigned to other bands.

Aeronautical Radio, Inc., Airfone, Inc., and the *Western Union Corporation*, which owns fifty percent of Airfone, were all primarily concerned that an air/ground service be established, but also contended that fixed service at 900 MHz would be inappropriate. Airfone, however, did offer an alternative 900 MHz allocation plan, which would allocate four MHz of spectrum each to the fixed service, air/ground service, and personal radio service. This plan would allocate the 932–934 and 941–943 MHz bands to the fixed service, with the 934–935 and 943–944 MHz bands remaining in reserve for possible future use. Airfone stated that since demand for all three of the proposed 900 MHz services is speculative, a final allocation plan should not be enacted until actual

demand and usage data are available to the Commission. ARINC, however, contended that it was clear that 12 MHz of spectrum was needed for an air/ground service, and that the 900 MHz fixed request should be denied.

Cardion Electronics stated that it was not qualified to comment on the public interest aspects of the allocation, but noted that a 900 MHz allocation for fixed services would reduce congestion at 2130 MHz and 2180 MHz, where private operational fixed users are experiencing difficulties finding available channels.

The Harris Corporation—Farinon Division stated that it could provide equipment for a 900 MHz fixed service or, alternatively, could provide equipment for a 1427–1435 MHz fixed service as proposed by Motorola. Farinon stated, however, that if the Commission does proceed with a 900 MHz allocation, it should promulgate a channel plan and technical rules to guide equipment design. Otherwise, according to Farinon, the bands could develop in an unstructured fashion.

Appendix B—Joint FCC/NTIA Cooperative Spectrum Management Efforts

Past Efforts

(1) 1970—The bands 890–902 MHz and 928–942 MHz were reallocated from Government Radiolocation to non-Government (NG) Mobile in Docket 18262.

(2) 1970—Twelve frequencies in the Government Land Mobile band 406–420 MHz were made available to the FCC for subsequent licensing of AT&T for operation of the public telephone system on the Metroliner operating between Washington, D.C. and New York City.

(3) 1982—The Government reduced their fixed and mobile allocations in the band 14.4–14.5 GHz from primary to secondary in order to provide free access for the NG Fixed Satellite Service.

(4) 1983—The implementation of certain bands at 3, 4, and 5 GHz for the International Fixed Satellite Service (Intelsat) was accomplished. This agreement has an impact on Government radiolocation, fixed and mobile allocations.

(5) 1983—The effort to provide recognition for Power Line Carrier operations in the bands 10–490 kHz was achieved.

(6) 1983—Six channels in the 27.54–28.00 MHz band were made available to eligibles in the Forest Products Radio Service on a secondary basis to Government operations.

(7) 1983—Ten pairs of frequencies in the 49 MHz band were made available for cordless phones for a five year period on a secondary basis to Government operations.

(8) 1983—Ten pairs of frequencies in the 162–174 MHz band were made available for wireless microphones on a secondary basis to Government operations.

Presently Active

(1) Pending—The Government has offered the band 421–430 MHz for NG Land Mobile operations in Buffalo, Cleveland and Detroit since the FCC has been unable to provide additional 800 MHz channels through the Docket 18262 proceeding. Primary Government Radiolocation operations will be minimized in these areas.

(2) 1979—The Government has offered the band 27.54–28.00 MHz, if required, for expanded Citizens Band Radio. Government Fixed and Mobile systems will be removed.

(3) 1984—The Commission has requested reallocation of the 1545–1559 MHz and 1646.5–1660.5 MHz bands for future accommodation of anticipated mobile-satellite requirements.

(4) 1984—The Commission has requested reallocation of the 1610–1626.5 MHz and 5117–5183 MHz bands for accommodation of a radiodetermination satellite service.

Future Efforts

(1) The Government has agreed to phase out radiolocation use of the band 216–225 MHz. A joint FCC/NTIA exercise will be undertaken to plan the use of this band.

(2) The Commission has realeased a Notice of Inquiry regarding the future use of the fixed and mobile allocations between 19.7–40 GHz. NTIA staff is providing input to this long range planning exercise.

Appendix C

For the reasons set forth in the preamble, Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Part 2—Frequency Allocations and Radio Treaty Matters; General Rules and Regulations

1. In § 2.106, the Table of Frequency Allocations, Column 4, 5 and 6 are revised to reflect a revision of the 928–960 MHz band to read as follows: (*Note:* This Table reflects concurrent Commission action in General No. 82-335 published elsewhere in this issue.)

§ 2.106 Table of frequency allocations.

United States table		FCC use designators	
Government	Non-Government	Rule part(s)	Special use frequencies
Allocation MHz	Allocation MHz		
(4)	(5)	(6)	(7)
928–932 US116 US215	928–929 Fixed. US116 US215 US268	Domestic public land mobile (22). Private land mobile (90). Private operational fixed microwave (94).	
US268 G2	929–932 Land mobile. US116 US215 US268	Domestic public land mobile (22). Private land mobile (90).	
932–935 Fixed. US215 US268 G2	932–935 Fixed. US215 US268		
935–941 US116 US215 US268 G2	935–941 Land mobile. US116 US215 US268	Reserve.	
941–944 Fixed. US268 US301 US 302	941–944 Fixed. US268 US301 US302		
944–960	944–960 Fixed. NG120	Auxiliary broadcasting (74). Domestic public fixed (22). International fixed public (23). Private operational fixed microwave (94).	

* * * * *

2. In § 2.106, Footnote US116 in the list of footnotes following the Table of Frequency Allocations is revised to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

UNITED STATES FOOTNOTES

* * * * *

US116 —In the bands 890–902 MHz and 935–941 MHz, no new assignments are to be made to Government radio stations after July 10, 1970 except on case-by-case basis, to experimental stations and to additional stations of existing networks in Alaska. Government assignments existing prior to July 10 1970 to stations in Alaska may be continued. All other existing Government assignments shall be on a secondary basis to stations in the non-Government land mobile service and shall be subject to adjustment or removal from the bands 890–902 MHz, 928–932 MHz and 935–941 MHz at the request of the FCC.

* * * * *

[FR Doc. 85–1960 Filed 1–31–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 2 and 74

[Gen. Docket No. 82–335; FCC 84–557]

Frequency Allocation for Aural Broadcast Studio Transmitter Links and Intercity Relay Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission has revised its Rules to provide additional frequencies for Aural Broadcast Studio Transmitter Links and Intercity Relay Stations. These stations allow broadcasters to locate their transmitters at remote broadcasting sites to achieve improved coverage of their service areas. The action reallocates the frequencies 944–947 MHz to the stations. The action also accommodates existing users between 942–944 MHz.

EFFECTIVE DATE: February 25, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Tropea, Office of Science and Technology, 2025 "M" Street, NW., Washington, D.C. 20554, (202) 653–8167.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Frequency allocations.

47 CFR Part 74

Radio.

Report and Order

In the matter of amendment of parts 2, 21, 74 and 94 of the Commission's rules and regulations to expand the frequencies available for use by aural broadcast STL and intercity relay stations, Gen. Docket No. 82–335 and amendment of parts 2, 21, 74 and 90 of the Commission's rules and regulations to make available to aural broadcast STL and intercity relay stations the 942–947 MHz band on a primary basis, RM–2697 and amendment of parts 2 and 74 of the Commission's rules to permit broadcast aural studio-transmitter links to operate on a secondary, non-interfering basis in unassigned UHF television channels, RM–3246 and amendment of parts 2 and 74 of the Commission's rules to permit aural broadcast STL operations in the band 2150–2160 MHz and to accommodate STL, intercity relay stations and certain low power broadcast auxiliary stations within the frequency band 947–952 MHz, Docket No. 19130 and amendment of parts 2 and 74 of the Commission's rules to permit aural broadcast STL operations in the band 2110–2113 MHz, Docket No. 19494 and amendment of parts 2 and 74 of the Commission's rules to expand frequencies available to the auxiliary broadcast service in Puerto Rico RM–4712.

Adopted: November 21, 1984.

Released: January 18, 1985.

By the Commission: Commissioner Rivera dissenting in part and issuing a statement at a later date.

Introduction

1. This *Report and Order* amends the Commission's Rules to reallocate for Aural Broadcast Studio Transmitter Links (STL) and Intercity Relay (ICR) stations (hereinafter STL/ICR), the frequencies 944–947 MHz in the fifty states and 942–947 MHz in Puerto Rico. This Action also provides for the grandfathering of existing STL/ICR stations in the 942–944 MHz band and dismisses the proposed allocation of frequencies in the 2130–2150 MHz and 2180–2200 MHz bands (2 GHz) for STL/ICR use. This completes the rulemaking foreseen in Docket 18262, wherein the Commission reallocated the spectrum at 942–947 MHz from STL/ICR use to land mobile use but permitted continued operation of existing STL/ICR stations pending a decision on their relocation.

Background

2. On June 23, 1982, the Commission adopted a *Notice of Proposed Rule Making* in the above captioned matter.[1] The *Notice* proposed that the 2130–2150 MHz and 2180–2200 MHz bands be made available for use by STL/ICR stations on a shared basis with private operational-fixed microwave stations.

3. The Commission action was in response to several rulemaking proceedings and petitions dating back to 1970. Prior to 1970, all of the 942–952 MHz band was allocated for STL/ICR use. However, in Docket 18262 the Commission reallocated the frequencies 942–947 MHz to the land mobile services.[2] Docket 18262 provided by Footnote NG 64 that broadcast auxiliary stations licensed as of July 10, 1970 could continue to operate at 942–947 MHz, pending a decision on their disposition based on a future rulemaking proceeding.

4. In 1971, the Commission adopted Docket 19130, which proposed reallocating the frequencies 2150–2160 MHz for use by STL/ICR.[3] In 1972, in a *Further Notice* in Docket 19130/19494, the Commission dismissed the proposal for use of 2150–2160 MHz band by STL/ICR due to difficulties with sharing with the Multipoint Distribution Service and proposed to reallocate the band 2110–2113 MHz instead.[4] In 1976, the National Association of Broadcasters petitioned the Commission (RM–2697) to return the 942–947 MHz band for STL/ICR use. Shortly thereafter in 1978, Moseley Associates Inc. petitioned the Commission (RM–3246) to reallocate certain frequencies from UHF–TV Channels 50–59 (686–746 MHz) for STL/ICR operation. The Commission responded to these petitions by issuing the *Notice* in Docket 82–335 to find other suitable spectrum for STL/ICR stations while they continued to use the 942–947 MHz band. The *Notice* dismissed the 2110–2113 MHz band as a replacement for 942–947 MHz because of unworkable sharing requirements with Common Carrier stations. It proposed that the bands 2130–2150 MHz and 2180–2200 MHz be allocated for STL/ICR on a shared basis with private operational fixed stations.

5. The comments and reply comments to the *Notice* addressed two main issues i.e., the need for spectrum for STL/ICR stations and the allocation of suitable spectrum.[5] These issues and our findings

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[1] Gen. Docket No. 82–335, 47 FR 31170 (July 16, 1982).

[2] *First Report and Order and Second Notice of Inquiry* in Docket 18262, 35 FR 8644 (June 4, 1970).

[3] *Notice of Proposed Rule Making and Notice of Inquiry* in Docket No. 19130, 36 FR 1425 (January 29, 1971).

[4] *Further Notice of Proposed Rule Making* in Docket No. 1949, 37 FR 8555 (April 28, 1972).

[5] A list of all commenters is contained in Appendix A.

are discussed in the following paragraphs.

Discussion

The Need for Spectrum for STL/ICR Stations

6. Comments from broadcasting entities stressed the importance and growing role of STL/ICR to broadcast licensees for serving their communities. They noted that these stations allow broadcasters to locate their transmitters at remote broadcasting sites to achieve improved coverage of their service areas and better engineering of broadcasting systems. Frequency availability is critical for these stations, it was noted, since they furnish the communication circuits to transmit programs between the studio and transmitter locations.

7. The NAB commented on the growth of STL/ICR facilities and reported that authorizations numbered 50 in 1956, 2447 in 1981 and would number a projected 4400 by 1985. Additionally, NAB noted that STL/ICR station growth has increased by an average of 17% annually for the past ten years. Other commenters added that the need for aural transmission links will grow even more as AM stereo use increases and as digital techniques become more widely used.

8. Except for an allocation at 18 GHz made recently in Docket 79-188,[6] only the 947-952 MHz band is presently available to aural STL/ICR stations. In many metropolitan areas, no more channels are available for new stations. Our *Notice* in this proceeding recognized that, since 1972, the growth in the number of STL/ICR authorizations has escalated in direct relationship to the growth of FM stations. As of September, 1984, there were 3392 STL/ICR licensed stations in the 942-952 MHz band, 577 of which were in the 942-947 MHz segment of the band. Thus, the need for spectrum to accommodate the present and growth requirements of these stations is apparent.

The Allocation of Suitable Spectrum

9. The proposal in the *Notice* to replace the 942-947 MHz STL/ICR frequencies with 2130-2150 MHz and 2180-2200 MHz frequencies received mostly unfavorable comments. Many broadcasters argued that the 942-947 MHz band should be retained for exclusive STL/ICR use since the value of shared 2 GHz spectrum is questionable. Commenters also stated that relocation would be expensive to broadcasters; NAB provided cost figures of $23,000 per station or about thirteen million dollars to move all STL/ICR stations out of the 942-947 MHz band. Several commenters urged granting the NAB petition (RM-2697) to reallocate the 942-947 MHz band back to the broadcasting auxiliary service. The Puerto Rico Association of Broadcasters, in a separate petition (RM-4712), requested that Puerto Rican stations be allowed to continue using the 942-947 MHz band regardless of the outcome of this proceeding.[7]

10. While some commenters agreed that sharing may be possible at 2 GHz, other commenters submitted that the band is already congested, particularly in metropolitan areas such as Los Angeles, San Francisco, and New Orleans, and that other frequencies should be considered for STL/ICR use. Further, commenters stated that there will be an increased need for the use of 2 GHz private operational-fixed microwave stations due to the loss of the 12 GHz band to direct broadcasting satellites. Still others urged that if STL/ICR are allowed to use the 2 GHz frequencies, that the use be on a secondary basis to private operational-fixed stations.

11. Various commenters suggested that alternate spectrum be allocated to STL/ICR. Some supported the allocation of frequencies near to the 942-947 MHz band, such as 899-902 and 938-941 MHz, since existing equipment would be readily adaptable. A few commenters suggested the sharing of the 1427-1435 MHz band between STL/ICR and Government users. Others suggested the shared use of the frequencies 2500-2690 MHz with the Instructional Television Fixed Service. However, the two bands at 899-902 MHz and 938-941 MHz will be used for mobile operations, and sharing with STL/ICR stations would not be compatible. Government use of the 1427-1435 MHz band includes airborne operations which would significantly restrict its use by terrestrial point-to-point operations. Spectrum in the 2500-2690 MHz band was recently allocated to the ultipoint Distribution Service. Finally, several commenters expressed support for the allocation of UHF-TV frequencies in the 686-746 MHz band as proposed by Moseley Associates in its Petition (RM-3246). However, expected heavy usage of these frequencies by low power television stations and TV translators makes them unattractive for use by STL/ICR stations.

12. Continued access to the 942-947 MHz band, as requested in the NAB petition, now appears warranted on the basis of the current plans for use of the 900 MHz reserve. In this regard, Commission action in Docket 82-243 has allocated the frequencies 941-944 MHz for Government and non-Government fixed usage [8] and, thus, has provided for point-to-point operation in the band which was previously allocated for land mobile. We believe that existing STL/ICR operations can be accommodated on the frequencies 942-944 MHz since they also operate point-to-point and such similar services can readily share spectrum. In addition, there are only 121 existing STL/ICR stations in the 942-944 MHz segment so that their continued operation would not have an adverse effect on developing Government and non-Government fixed usage. Therefore, we will grandfather existing licensed STL/ICR stations that operate in the band 942 MHz to 944 MHz.[9] These stations may continue to operate on a co-equal basis with other stations operating in accordance with the Table of Frequency Allocations but since one way service on paired frequencies limits the use of the pair, we will not allow any more STL/ICR stations to be licensed in the band.

13. With regard to the 944-947 MHz band, we believe substantial STL/ICR growth can be accommodated. Currently there are approximately 2815 stations in the 947-952 MHz band nationwide (or approximately 310 stations per channel). Since only 456 STL/ICR stations are now licensed in the 944-947 MHz band (or approximately 76 stations per channel), a projection assuming similar channel loading as that achieved at 947-952 MHz indicates that over 1400 new STL/ICR assignments might be made.

[6] *Second Report and Order in Gen. Docket 79-188*, 48 FR 50322 (November 1, 1983).

[7] RM-4712 was filed on November 21, 1983 by the Puerto Rico Association of Broadcasters and was placed on Public Notice on December 27, 1983. One comment was filed and it was supportive of the petition. In view of the petition's relevance to the issues considered herein, it will be entertained as a late-filed comment in this proceeding.

[8] *Report and Order* in Gen. Docket 82-243, adopted on November 21, 1984.

[9] There are approximately 50 Special Temporary Authorizations (STA) for STL/ICR stations operating between 942 and 944 MHz. We will not grandfather these stations, which were allowed to begin operations in this band on a temporary basis after the band had been allocated to the land mobile reserve. However, for a one year period from the date these Rules are adopted, we will attempt to avoid the assignment of new stations which would cause interference to these STL/ICRs. After that first year, and for an additional four years, stations operating under an STA must accept interference created by new assignments and must vacate the frequency if interference is caused to a newly assigned licensee. STAs will not be extended beyond the five year period. These stations are encouraged to seek new permanent channels at the earliest opportunity to insure minimum disruption of operation.

Therefore, we are reallocating 944–947 MHz for exclusive auxiliary broadcasting use. It should be noted that the band edge frequency 944 MHz is not available for assignment to STL/ICR stations.[10]

14. An exception to the above action will be made for stations operating between 942–944 MHz and located in Puerto Rico. Since other authorized service operations are not likely to affect Puerto Rico to any significant extent, STL/ICR users in Puerto Rico may continue to apply for and operate in the entire 942–947 MHz band on a primary basis. Puerto Rico is currently served by over 100 broadcast stations; the island's geographic limitations and the convergence of transmission paths at high altitude sites limit frequency reuse. Thus, the availability of all 10 channels in the 942–947 MHz band would be cost effective and immediately beneficial for Puerto Rican broadcasters who could use available 900 MHz equipment at established antenna sites.

15. With regard to the proposed allocation of 2 GHz frequencies as set forth in the *Notice*, it now appears that this band is no longer the most favorable choice for replacing the 942–947 MHz STL/ICR allocation. The Commission's records show that the 2 GHz allocation currently supports approximately 4000 private operational-fixed microwave users and the band may have to accommodate some of the fixed service users that will be displaced as a result of the loss of 12 GHz to Direct Broadcast Satellites (DBS). The benefit of relocating STL/ICR stations at 2 GHz appears questionable in light of the developing occupancy of the band. However, on a case-by-case basis, upon the showing of that a new assignment cannot engineered in at 944–952 MHz, the Commission will accept waiver requests for STL/ICR authorizations in the 2 GHz band. At some later time, the Commission could re-open the issue of STL/ICR operations at 2 GHz after fixed users displaced by DBS from the 12 GHz band have been reaccommodated and it is determined that more STL/ICR spectrum is needed.[11]

Technical Matters

16. The technical standards presently applicable to STL/ICR stations operating between 947–952 MHz will apply to those operating between 942–947 MHz as well.[12] Changes are being made to Sections 74.502, and 74.534 to reflect the allocation discussed above.

Summary

17. In consideration of the public comments discussed herein, we are amending the Commission's Rules in response to the *Notice*. Accordingly, to provide spectrum relief for STL/ICR stations the following rule changes are implemented:

A. Section 2.106, Footnote NG64, is deleted.

B. Two new footnotes, US301 and US302, are established to show the provisions to grandfather existing stations operating between 942 and 944 MHz and to permit stations in Puerto Rico to continue operation between 942–947 MHz on a primary basis, respectively.

C. Sections 2.106, 74.502, and 74.534 are modified to reallocate the frequencies at 944–947 MHz and provide technical standards for the exclusive use by STL/ICR stations.

Regulatory Flexibility Act Final Analysis

18. Pursuant to 5 U.S.C. 601 *et seq.* an Initial Regulatory Flexibility Analysis was incorporated in paragraph 27 of the *Notice*. In paragraph 28 of the *Notice* written comments on the proposals in these documents, including the Regulatory Flexibility Analysis, were requested. Accordingly, the Commission issues the following regulatory flexibility analysis:

A. Need for and Objective of rule

The allocation will make new spectrum available at 944–947 and for STL/ICR stations currently operating under the provision of Footnote NG 64 of the Table of Frequency Allocations.

B. Summary of issues raised in comments on Initial Analysis

We received no comments specifically concerned with the Initial Regulatory Flexibility Analysis in this proceeding. Moreover, our action imposes no new reporting or record keeping requirements on STL/ICR users.

C. Significant alternatives

All 577 existing licensees have been accommodated by reallocating 944–947 MHz for STL/ICR usage and by allowing existing users to remain between 942–944 MHz. The opportunity to take advantage of the new channels between 944–947 MHz will be open to all present and potential users large and small and it is expected that the additional spectrum sharing will provide increased spectrum usage and efficiency. We do not believe that there is any alternative to our proposals which would have less effect on small entities.

Administrative

19. Pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended 47 U.S.C. 4(i) and 303, it is ordered, That: Parts 2, 74 and 94 of Chapter I of Title 47 of the Code of Federal Regulations are amended as set forth in Appendix B, effective February 25, 1985.

20. It is further ordered that the proceedings in General Docket No. 82–335, Docket No. 19130 No. and Docket 19494 are terminated.

21. It is further ordered that the Puerto Rico Association of Broadcasters Petition, RM–4712, is dismissed as moot.

22. It is further ordered that the National Association of Broadcasters Petition, RM–2697 is granted in part for the frequencies 944–947 MHz and denied in part for the frequencies 942–944 MHz.

23. It is further ordered that the Moseley Associates, Inc. Petition, RM–3246 is denied.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Parties Filing Comments and/or Reply Comments in Gen. Docket No. 82–335

American Petroleum Institute
Arizona Department of Public Safety
Associated Public-Safety Communications Officers, Inc. (APCO)
Association of American Railroads
County of Los Angeles, Department of Communications
Cox Communications, Inc.
Harte-Hanks Radio, Inc.
Harris Corp.
Knipp, Roger W.
Minnesota Department of Transportation
Moseley Associates, Inc.
Motorola, Inc.
Multimedia, Inc.
National Association of Broadcasters (NAB)

[10] The channeling plan for 942–952 MHz provided for 500 kHz wide channels. Although the band 942–947 was reallocated in Docket 18262, authorizations continued to be granted to auxiliary broadcasting stations for operation on the channel centered at 947.0 MHz. Assignments on 944 MHz will not be authorized since the resulting channel would occupy spectrum below 944 MHz.

[11] *First Report and Order in Gen. Docket 82–334*, 48 FR 50722 (November 3, 1983). *Second Report and Order in General Docket 79–188*, 48 FR 50322 (November 1, 1983).

[12] In 1985, the Commission will issue a Notice of Proposed Rule Making which will seek to realign the channeling plan and review technical characteristics, including channel bandwidth, so as to permit a more intensive and efficient use of these frequencies for STL/ICR purposes.

National Broadcasting Company (NBC)
National Public Radio (NPR)
National Radio Broadcasters Association (NRBA)
Public Broadcasting Service (PBS)
Taxi Productions, Inc.
Utilities Telecommunications Council (UTC)
WAMC
Western New York Public Broadcasting Association
Westinghouse Broadcasting and Cable, Inc.

Parties Filing Comments in Petition, RM–4712

Puerto Rico Association of Broadcasters.

Appendix B

For the reasons set forth in the preamble, Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. In § 2.106, the Table of Frequency Allocations, Column 4, 5 and 6 are revised to reflect a revision of the 928–960 MHz band to read as follows: (Note: This Table reflects concurrent Commission action in General No. 82–243 published elsewhere in this issue.)

§ 2.106 Table of frequency allocations.

United States table		FCC use designators	
Government	Non-Government	Rule Part(s)	Special use frequencies
Allocation MHz	Allocation MHz		
(4)	(5)	(6)	(7)
928–932	928–929 Fixed US116 US215 US268	Domestic public land mobile (22) Private land mobile (90) Private operational Fixed microwave (94)	
US116 US215 US268 G2	929–932 Land mobile US116 US215 US268	Domestic public Land mobile (22) Private land mobile (90)	
932–935 Fixed US215 US268 G2	932–935 Fixed US215 US268		
935–941 US116 US215 US268 G2	935–941 Land mobile US116 US215 US268	Reserve	
941–944 Fixed US268 US301 US302	941–944 Fixed US268 US301 US302		
944–960	944–960 Fixed NG120	Auxiliary Broadcasting (74) Domestic public Fixed (22) International fixed Public (23) Private operational Fixed microwave (94)	

2. In § 2.106, the list of Footnotes following the Table of Frequency Allocations is revised by adding in numerical sequence footnotes US301 and 302 and by removing footnote NG64.

§ 2.106. Table of frequency allocations.

* * * * *

UNITED STATES FOOTNOTES

* * * * *

US301 Except as provided in US302, broadcast auxiliary stations licensed as of November 21, 1984, to operate in the band 942–944 MHz may continue to operate on a co-equal primary basis to other stations and services operating in the band in accordance with the Table of Frequency Allocations.

US302 The band 942–944 MHz in Puerto Rico is allocated as an alternative allocation to the fixed service for broadcast auxiliary stations only.

* * * * *

PART 74—EXPERIMENTAL, AUXILIARY AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. In § 74.502 paragraph (d) is removed and paragraph (a) is revised to read as follows:

§ 74.502 Frequency assignment.

(a) The frequency band 944–952 MHz [1] is divided into fifteen 500 MHz channels for assignment to aural broadcast STL and intercity relay stations. Each of the following frequencies is the center frequency of a channel.

(MHz)

944.5	947.0	949.5
945.0	947.5	950.0
945.5	948.0	950.5
946.0	948.5	951.0
946.5	949.0	951.5

* * * * *

2. In § 74.534 paragraph (a) is revised to read as follows:

§ 74.534 Power Limitations.

(a) for operation in the 944–952 MHz band:

Aural broadcast STL and intercity relay stations will be licensed with a power output not in excess of that necessary to render satisfactory service. The license for these stations will specify the maximum authorized power. The operating power shall not be greater than necessary to carry on the service and in no event more than 5 percent above the maximum power specified. Engineering standards have not been established for these stations. The efficiency factor for the last radio stage of transmitters employed will be subject to individual determination but shall be in general agreement with values normally employed for similar equipment operated within the frequency range authorized.

* * * * *

[FR Doc. 85–1986 Filed 1–31–85; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Parts 2, 73, and 76

[MM Docket No. 84–168; FCC 84–530]

Amendment of the Commission's Rules To Authorize the Offering of Data Transmission Services on the Vertical Blanking Interval by TV Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein authorizes broadcast television stations to operate ancillary telecommunications services on the vertical blanking interval

[1] Note: In addition to this band, stations in Puerto Rico may continue to be authorized on 942.5, 943.0, 943.5 944.0, MHz in the band 942–944 MHz on a primary basis to stations and services operating in accordance with the Table of Frequency Allocations.

of the television video signal. The Commission finds that it would serve the public interest to expand the current teletext authority to permit use of the vertical blanking interval for additional services such as data transmission, computer software delivery, and paging. The new authority provides television licensees with full discretion to determine the services transmitted on their vertical blanking interval facilities and is not bound by a definitional constraint that limits transmissions to a particular kind of service.

EFFECTIVE DATE: March 4, 1985.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Television.

47 CFR Part 73

Television broadcasting.

47 CFR Part 76

Cable television.

Report and Order

In the matter of Amendment of Parts 2, 73, and 76 of the Commission's Rules to Authorize the Offering of Data Transmission Services on the Vertical Blanking Interval by TV Stations; MM Docket No. 84-168.

Adopted: November 8, 1984.
Released: January 24, 1985.

By the Commission: Commissioner Rivera dissenting in part and issuing a statement at a later date.

Introduction

1. By this *Report and Order*, the Commission is amending its rules to authorize television stations to operate data and other communications services on the vertical blanking interval (VBI) of the television video signal.[1] This action expands the teletext authority provided in Docket No. 81-741 to permit additional VBI communications services such as data transmission, computer software delivery, and paging.

Background

2. In authorizing teletext services on the VBI, the Commission defined teletext as "a data system for the transmission of textual and graphic information intended for display on viewing screens." [2] While this definition of teletext provides for a wide range of service possibilities, it does preclude applications such as data transmission and paging. The Commission recognized that there was interest in using the VBI for these and other kinds of non-teletext services and indicated that it would consider initiation of a separate rule making to study authorization of other types of services on the VBI.[3]

3. Accordingly, on February 15, 1984, the Commission adopted a *Notice of Proposed Rule Making (Notice)* in the above captioned matter.[4] In the *Notice*, the Commission proposed a broad authority for use of the VBI for data services. As proposed, this authority would permit transmission of data, processed information, or any other communication in either a digital or analog mode. The Commission also proposed to apply the same policies and rules adopted for teletext to the new VBI authority.

4. Fourteen comments and five reply comments were received in response to the *Notice*. A list of the parties that submitted comments is provided in Appendix A.

Discussion

5. *Expanded VBI Authority.* The commenting parties were nearly unanimous in their support for the expanded VBI authority.[5] They agree with the Commission's initial assessment contained in the *Notice* that to broaden the range of services permitted on the VBI would encourage more efficient use of the spectrum and would afford the public a better opportunity to obtain communications services from a variety of sources. Several parties, including the Financial News Network (FNN) and the Public Broadcasting Service (PBS) expressed interest in developing new services that would be permissible under the expanded authority.[6]

6. We believe that the record establishes that authorization of expanded use of the VBI is in the public interest. Section 303(g) of the Communications Act, 47 U.S.C. 303(g), instructs the Commission to "study new uses for radio * * * and generally encourage the larger and more effective use of radio in the public interest." Authorization of television stations to transmit data and other services on the VBI is consistent with this mandate. The expanded authority will provide new opportunities for the enlargement and enhancement of service on the television frequencies and thereby encourage more efficient use of the broadcast television spectrum. The interest in new VBI services expressed in the comments and the growing demand for data and paging services discussed in the *Notice* provide evidence that there is need for this authority. Moreover, as has been well demonstrated in the case of teletext, data signals on the VBI are compatible with existing broadcast transmission standards and can be transmitted without producing interference to other stations. Thus, the new authorization will provide a further expansion of broadcasters' service capabilities without adversely affecting or otherwise limiting the technical operation of other licensed services.

7. *Permitted VBI Services.* The consensus of the opinions expressed in the comments with respect to VBI services is that the Commission should provide broadcasters the maximum freedom to use their VBI facilities in the manner that best responds to the needs of the market. In this context, PBS, FNN, and NBC urge the Commission to establish the widest possible definition of "data services" to ensure that any form of digital or analog information can be transmitted. CBS believes, however, that the Commission should designate teletext as a primary service vis-a-vis VBI data services and that the authority to operate data services should be subject to the condition that such services not falsely enable alarm, priority, or other features of teletext decoders. Cybernetic Data Products, Inc. suggests that the Commission monitor the development of VBI services to ensure the widest possible range of uses of VBI facilities.

8. After reviewing the record on this matter, the Commission believes that VBI authority should be as expansive as possible. Accordingly, the Commission is amending its rules to provide licensees with the broadest possible discretion to select and define the services to be offered on the VBI. Under this authority, licensees will be permitted to transmit data, processed information, or any other communication in either digital or analog mode on the VBI. We will not protect particular uses of the VBI under this authority, such as teletext, nor will

[1] The vertical blanking interval is that portion of the television video signal that appears as a black bar when the picture rolls. Technically, it is lines 1-21 of field 1 and lines 1-20 and the first half of line 21 of field 2 of the video signal.

[2] *See, Report and Order*, BC Docket No. 81-741, 49 FR 27054, at para. 44.

[3] *Id.*, footnote 17.

[4] *See, Notice of Proposed Rule Making*, MM Docket No. 84-168, 49 FR 10556 (March 21, 1984).

[5] Several parties limited their comments to specific issues such as cable retransmission and thus did not address the basic question of whether to authorize expanded use of the VBI.

[6] FNN states that it is designing a data transmission system for delivery of business information and data via the VBI of both broadcast and cable facilities. PBS submits that public television stations are considering services ranging from distribution of computer software to individual schools to delivery of business data as possible uses of their VBI facilities.

we place any other artificial limits on the use of the VBI.[7] With regard to paging services, we recognized that such services would be competitive with existing common carrier and private paging systems and therefore specifically sought comments on whether the public interest would be served by the introduction of additional competition in this area. Our examination indicated that there was a definite need for additional paging services and that strong demand is expected to continue.[8] The comments generally support the use of the VBI for paging services but do not otherwise augment the record on this issue. Therefore, in view of the evidence of need for additional paging facilities and the absence of any indication of harm to the public interest from increased competition in this area, we are also permitting television licensees to use the VBI for paging services. Furthermore, to avoid any possible misinterpretations that might tend to limit the kinds of uses licensees would consider for their VBI facilities, services provided under the authority adopted in this proceeding hereinafter will be referred to categorically as "VBI telecommunications services."

9. In keeping with our intention to provide licensees with broad discretion in the use of the VBI, stations will be permitted to provide service under the expanded authority to the public at large, limited segments of the public with special interests, individual firms, organizations, and persons. The expanded authority will be granted to both full service and low power television stations,[9] and will permit private use, subscription service, business operation and conventional advertiser supported service.

Regulatory Structure for VBI Services

10. Services provided under the new VBI authority will be considered ancillary or secondary to regular television program service consistent with the policy we have applied in the teletext, FM subcarrier and TV aural baseband subcarrier authorizations.[10]

11. As stated in the *Notice*, the Commission considers use of the VBI for transmission of ancillary communications services to be a secondary priviledge that runs with the broadcast television license. Thus, we will not entertain competing applications for use of these facilities. Nor will we require licensees to obtain additional approval for the stations technical facilities in cases where private carrier or common carrier service is offered.

12. Licensees will be permitted to engage in franchise/lease arrangements with third parties for use of the VBI. While such arrangements will not be subject to prior approval by the Commission, the licensee will be required to maintain a written copy of the agreement at the station to be available to the Commission upon its request. The Commission recognizes that there may be particular situations where broadcasters would have no interest in providing a service themselves due to lack of familiarity or experience in the area but would be willing to enter into arrangements with others who have the necessary knowledge and expertise to operate the service. We believe that the franchise/lease option will facilitate the initiation of new types of service and thereby will encourage the more effective use of the VBI.

13. *Private and Common Carrier Services.*—The Commission proposed to govern private and common carrier VBI services as either private carrier or common carrier activities under the same system of regulation as that incorporated into the rules for other ancillary service authorizations. The responses to this proposal were divided. ABC, the TV Licensees, and the Operating Telephone Companies endorse the proposed regulation treatment of VBI service. They generally agree that the proposed approach: (1) provides maximum discretion for licensees to choose how VBI telecommunications services will be offered, (2) invokes common carrier regulation only to the extent necessary, (3) conforms to all applicable legal requirements as discussed in the *Notice*, and (4) places VBI services in a fair competitive relationship with other communications services. On the other side of this issue, the NAB, CBS, and NBC argue that the Commission should forbear from any common carrier regulation of VBI services. They contend that common carrier services would pose impediments to the development of VBI services. The NAB and NBC also ask the Commission to preempt state regulation of common carrier services. NBC submits that VBI and other ancillary services should be classified as "hybrid" and subject only to minimal regulation.

14. The Operating Telephone Companies caution that there may be a potential conflict between the VBI authorization and the outcome of the Commission's separate investigation of the extent and dangers of local telephone bypass.[11] They content that VBI services would create alternatives to telephone company services and thus create the very potential impact that the Commission is investigating in its bypass study.

15. After consideration of the record on this issue, the Commission has decided to regulate private and common carrier services under the expanded VBI authority in the manner proposed in the *Notice*. We find the nature and purpose of the VBI authority to be sufficiently similar to those of teletext, FM subcarriers, and TV aural subcarriers such that our determinations with respect to regulation of private and common carrier services under those authorizations are also appropriate to generalized use of the VBI. Moreover, we believe that the public interest will be served best by a policy that provides for consistent regulatory treatment under the separate ancillary service authorizations.

16. Under the approach we are extending to the VBI authority, specific services will not be classified as either private carrier or common carrier offerings. Instead, as we indicated in our

[7] The Commission does not find it desirable to provide regulation to protect teletext, or any other VBI services as authorized in this *Report and Order*, from competing services. We believe it is more appropriate to permit licensees to make their own determinations with respect to how to manage competition between alternative services.

[8] As described in the *Notice*, the Commission documented the need for additional paging services in General Docket No. 80-183 (*Paging Systems-DPLMRS*, 89 FCC 2d 1337 (1980). We also noted that studies by Arthur D. Little in 1975 and Frost and Sullivan in 1978 indicated that there would be approximately three million pagers in use by 1985. To provide for this anticipated demand, we allocated forty additional paging channels each for private and common carrier paging systems (*See Report and Order* in CC Docket No. 80-189, 49 RR 2d 1541; *recon. granted in part*, 47 FR 34561; and *Second Report and Order* in Docket No. 19327, 47 FR 34568). However, both the Ad Hoc Private Paging Committee (AHPPC) and Telocator Network of America (Telocator) submitted that this allocation of eighty channels might not be adequate (Paging Systems-DPLMRS, *supra* at 1338). Finally, we noted that more than 5,500 applications have been filed so far in response to the lowband and 900 MHz allocations.

[9] Gerald A. Rosander asks the Commission to extend the authority for use of VBI to ITFS stations as a way to improve the use of ITFS facilities and to assist in meeting what he states is a growing need to deliver data to students, classrooms, and schools. The Commission is not acting on this request as it is outside the scope of the issues addressed in the *Notice*.

[10] *See, Report and Order* in BC Docket No. 81-741, *supra*; *WFTL, Inc.*, 45 FCC 2d 1152, 1153-54 (1974); *Greater Washington Telecommunications Assn., Inc.* 49 FCC 2d 848 (1974); *Second Report and Order* in Docket No. 21323, 49 FR 18100.

[11] *See*, "Request for Data, Information and Studies Pertaining to Bypass of the Public Switched Network," Public Notice No. 3206, Released March 28, 1984.

teletext and FM subcarrier decisions,[12] services other than land mobile activities are to be classified according to the criteria established by the Court in the *NARUC I* decision.[13] Factors which the Court found to be indicative of non-common carriage are:

(1) The establishment of a medium-to-long term contractual relationships with customers,

(2) A relatively stable clientele base,

(3) Not holding out facilities indifferently, and

(4) The selection of clients on a highly individualized basis.

For land mobile services such as paging, Section 331(c) of the Communications Act, 47 U.S.C. 331(c) establishes a demarcation between private and common carrier land mobile services. This distinction is based on the manner in which a multiple licensed or shared private land station is interconnected with a telephone exchange or interexchange service or facility.[14] The statute also makes it clear that private systems are exempt from state and local regulation, 47 U.S.C. 331(c)(3). The initial determination as to whether a particular service is private or common carriage under the above standards will be the responsibility of the licensee.

17. Licensees intending to engage in VBI common carrier service will be required to obtain Commission authorization by filing an application in accordance with Part 21 or 22, as appropriate.[15] Public Notice will be given of each such request received, and a 30-day period will be afforded to all parties wishing to file comments or oppositions thereto. In seeking such authority, a television licensee will be in the same position, entitled to the same priviledges, and subject to the same obligations as a traditional offeror of the service. As stated in the *First Report and Order* in BC Docket No. 82-536, our policy will be that "applications to provide common carrier services from qualified applicants will be granted unless there is some basis to believe that 'such a grant is likely to produce results that conflict with the goals of the Communications Act.' " *supra* at para. 25.

18. Licensees intending to provide private carrier VBI services will be required to notify the Licensing Division of the Private Radio Bureau at Gettysburg, Pennsylvania, 17325, by letter, prior to the initiation of service. The letter must certify that the VBI facilities will be used in this regard only for permissible services in accordance with Parts 90 and 94 of the Rules.[16] Licensees providing land mobile services must also certify that the service will only be offered to users eligible under Part 90 of the Rules and that any interconnection of the station with a telephone exchange or interexchange service or facility will be obtained in accordance with Section 331 of the Communications Act.[17] Such notification will not give rise to a comment period, and no separate authorization will be issued by the Commission. A television licensee offering private carrier services will be entitled to the same priviledges, and subject to the same obligations and regulations as a traditional offeror of similar services.

19. Licensees intending to operate private carrier or common carrier services will not be required to obtain additional authorization for the technical facilities of the television station. This is consistent with our position that the authority for use of the VBI is a provision of the broadcast license. In cases where the licensee leases its VBI to a third party for a private or common carrier purpose, the lessee may be permitted to seek the appropriate service authorization. In all such cases of third party operation, the primary licensee of the television station will be held responsible for the technical operation of the transmitting facilities.

20. As discussed in the *Notice*, the Commission recognizes that there may be situations in which an operator of a service provided via the VBI could possibly have a competitive advantage over traditional offerors of similar services by virtue of the greater service area of some television stations and that this advantage might be particularly important in the market for paging services. We are also aware of the relationship of potential VBI services to the concerns we are investigating in the bypass study mentioned by the Operating Telephone Companies. However, we do not believe that authorizing television stations to operate common carrier services will adversely affect the public interest for several reasons. First, the VBI will be available for use by a wide range of disparate services and there is no indication that the industry will concentrate its use on paging or any other single service. Thus, it is likely that the number of stations operating a particular type of VBI service in a given market will be limited. The second consideration is that wide-area coverage is not necessarily more important to customers, particularly where there are differences in price and supplemental services among competitors.[18] A third factor specifically with respect to paging services is that there are many existing paging systems that operate wide-area systems that would be competitive with a VBI-based system. Finally, the comments provided no expression of concern from any existing service provider that there might be any adverse competitive effects from the operation of common carrier VBI services.

21. With respect to the preemption question, the Commission concludes that the facts and considerations in this matter are essentially the same as those addressed in our decision on this question for other broadcast ancillary service authorizations in a *Memorandum Opinion and Order* adopted April 26, 1984 (49 FR 19659) in BC Docket No. 82-536. In that decision we ruled that state regulation that has the effect of prohibiting or impeding entry of common carrier services provided through the facilities of teletext, FM subcarriers, or TV aural baseband subcarriers frustrates our federal objectives in authorizing such services and therefore should be preempted.[19] The preemption of state authority is limited at this juncture to regulation that affects entry. In view of the close parallel of the preemption issue in this proceeding to the issues addressed in our FM action, we will grant NAB and NBC's request that the Commission also preempt state regulation that has the effect of prohibiting or impeding entry to

[12] *See, Report and Order* in BC Docket No. 81-741, *supra*, paras. 61-68, and *First Report and Order* in BC Docket No. 82-536, *supra*, paras. 20-27.

[13] *See, National Association of Regulatory Utility Commissioner's* v. *FCC*, 525 F. 2d 630 (D.C. Cir. 1976); *cert. den'd.*, 425 U.S. 992 (1976).

[14] Section 331(c)(1) of the Act provides that ". . . private land mobile service shall include service provided by specialized mobile radio, multiple licensed radio dispatch systems, and all other radio dispatch systems, regardless of whether such service is provided indiscriminately to eligible users on a commercial basis, except that a land station licensed in such service to multiple licensees or otherwise shared by authorized users (other than a nonprofit, cooperative station) shall not be interconnected with a telephone exchange or interexchange service or facility for any purpose, except to the extent that: (a) each user obtains such interconnection directly from a duly authorized carrier; or (b) licensees jointly obtain such interconnection directly from a duly-authorized carrier."

[15] *See*, 47 FR Parts 21 and 22.

[16] *See*, 47 CFR Parts 90 and 94.

[17] The Commission's interpretation of the test in Section 331 of the Act is contained in our reconsideration of the *Second Report and Order* in Docket No. 20846, 89 FCC 2d 741. See *Memorandum Opinion and Order*, Docket No. 20846, 48 FR 29512 (June 27, 1983).

[18] *See, Cellular Communications Systems*, 86 FCC 2d 469, 485 (1981).

[19] *See, FM subcarrier Memorandum Opinion and Order, supra*, para. 17.

common carrier services operating under the VBI telecommunications authority.[20]

22. *Public Broadcasting Station Authority.* The Commission believes that the record supports authorization for public stations to operate a full range of telecommunications services on the VBI and to do so on either a commercial or non-commercial basis. We therefore will allow public television stations to use the VBI for ancillary telecommunications services in the manner as commercial broadcasters and to operate such services on a remunerative basis. This decision follows our similar action with respect to use of ancillary facilities by public broadcast stations in other proceedings and is intended to provide public television stations with opportunities to develop alternative sources of financing.[21]

23. *VBI Technical Rules.* In the *Notice*, the Commission proposed to apply the same technical rules adopted for teletext in BC Docket 81-741 to technical operation of services provided under the new VBI authority. These rules provide for signals on lines 14-18 and 20 of the VBI and permit licensees full discretion with respect to technical systems and signaling methods, subject only to the minimum constraints necessary to ensure that there is no interference to the originating station's primary service or to the service of other stations.[22] The commenting parties all agree that these rules are satisfactory and approrpriate for continued application in the broader context of a general authorization for use of the VBI. In response to the Commission's request for information with respect to signaling methods that may be appropriate for specific services or VBI operations in general, the NAB submits that research in this area is at too early a stage to permit discussion and offers that a complete answer to this question should not be a prerequisite to use of the teletext rules for technical regulation of VBI services.

24. The technical regulations applied to teletext operation were designed to provide maximum flexibility in signaling methods. The record in this proceedings provides no indication that there are signaling methods for VBI operations in general that would necessitate more restrictive technical rules than those applied to teletext. Therefore, the Commission finds the technical rules adopted for teletext to be satisfactory for regulation of VBI services and will continue to rely on these rules to govern operation under the expanded authority.

25. *VBI Decoders.* External VBI decoders are expected to fall under the same two basic categories as teletext decoders. We believe that the current rules for teletext are adequate to cover these devices. The categories of devices and their associated treatment under Part 15 are:

(1) A VBI decoder that is separate from and external to a TV receiver and supplies a modulated RF signal to the antenna input terminals of the receiver is classified as a TV Interface Device, subject to certification under Subpart H of Part 15 of the rules.[23]

(2) A stand alone VBI decoder is subject to verification for compliance with Subpart C of Part 15 of the rules, whether or not it includes digital electronic processing for a function directly associated with the operation of the receiver (e.g., paging, scanning or programmability). However, if such a VBI decoder were to consist of a receiver or tuner in the same cabinet with a microprocessor having a function not directly associated with the operation of the receiver (e.g., a microprocessor for producing data for the input to a personal computer), the receiver and the microprocessor are considered separate equipment. In this case, receiver (or tuner) would be subject to verification under Subpart C of Part 15 and the microprocessor would be subject to the appropriate computing device requirements of Subpart J of Part 15.[24]

26. The treatment of decoders built-in to a TV receiver will depend on the arrangement of the receiver and decoder components. If the VBI signal is fed directly to the TV video amplifier circuits, the TV receiver requirements in Part 15, Subpart C apply to the entire unit. On the other hand, if the VBI signal is fed to the TV receiver front end, the decoder will be treated separately as an interface device. In either case, Sections 15.65 through 15.68 of the rules will not apply to VBI decoder circuitry, provided that a switch is included to permit reception of the normal television signal when the unit is not in the VBI mode.

27. *Cable Retransmission*—Commenting parties with broadcast and related interests all support some form of cable retransmission requirements for VBI services. PBS and the FNN argue for mandatory carriage of all VBI services. They submit that the absence of must carry protection for their VBI communications services will work hardships on their own organizations or those who use their services. Other broadcast parties, including the NAB, NBC and the TV Licensees, urge the Commission at a minimum to require cable carriage of teletext and other services that enhance regular programming or are intended for reception by the general public. NCTA and Gill Industries, as representatives of the cable television industry, oppose any form of signal carriage obligations for VBI services. They adhere to the Commission's rationale in its action on the issue in the teletext and TV aural subcarrier proceedings [25] and state that as ancillary activities, VBI telecommunications services do not merit must carry protection. NCTA also submits that this is not the proper proceeding to reconsider the Commission's teletext decision.

28. The Commission is not persuaded that it should reverse its determinations with respect to cable carriage of ancillary services in the teletext and TV aural subcarrier proceedings. Thus we will not require cable systems to carry broadcasters' VBI telecommunications

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[20] On reconsideration of the FM Subcarrier *Memorandum Opinion and Order, supra*, we concluded that the public had been afforded adequate notice that we might decide to preempt state entry regulation. *Memorandum Opinion and Order*, in BC Docket No. 82-536, adopted November 8, 1984. We also note that NAB and NBC commented on the regulatory matters raised in the instant *Notice of Proposed Rule Making* by requesting that we preempt state regulation. As in our FM Subcarrier proceeding, the commenters, in response to our proposal, raised the preemption issues when responding to the regulatory proposals contained in the *Notice*. Thus, the commenters had an opportunity to address the preemption issue. *See*, Comments of the National Association of Broadcasters at 3 and National Broadcasting Company at 5, 8; *see also*, Reply comments of Satellite Network Delivery Corporation at 2.

[21] *See, Report and Order* in Docket No. 81-741, *supra*, paras. 50-52; *see also, Second Report and Order* in Docket No. 21323, *supra*, para. 16.

[22] The constraints in the technical rules are that: 1) signal injection levels shall not exceed 80 IRE units on lines 15-18 and 20 or 40 IRE units on line 14 and 2) VBI signals shall not produce interference to the stations program service or to the service of other licensed stations. The signal level permitted on line 14 will increase gradually over time as receiver designs are modified to accommodate higher VBI signal levels. Lines 10-13 will also be phased-in for use over the next several years. These rules are set for in Appendix B, § 73.682(a).

[23] In Docket No. 79-244, the rules regulating a Class I TV Device were replaced with new rules that renamed this kind of equipment a "TV Interface Device," revised the technical standards and changed the equipment approval requirement from type approval to certification. The *Report and Order* in this proceeding was adopted February 9, 1983 (48 FR 13029, published March 29, 1983).

[24] *See*, Public Notice dated March 7, 1984, titled "Clarification of Requirements for Receivers Combined with Computing Devices," FCC-3206.

[25] *See, Report and Order* in BC Docket No. 81-741, *supra*, para. 88 and *Second Report and Order* in Docket No. 21323, *supra*, para. 26.

services. However, in the teletext and TV aural subcarrier proceedings we have undertaken to further consider the question of whether to apply must carry protection to services that are directly related to regular programming.[26] Examples of such services include stereophonic sound and second language service on aural subcarriers and captions and superimposed text on teletext. The Commission has stated that due to the similar natures of the issues in both of these matters, it will resolve the must carry issue for teletext that is directly related to regular programming when it takes final action on must carry status for program related aural subcarriers. We believe that the same question is appropriate with respect to any new VBI services that might be program-related. In order to permit us to consider all of these must carry issues at the same time, we will also defer action on must carry status for program-related VBI services until our final decision in the TV aural subcarrier matter.

29. *Replacement of the Teletext Rules*—Services authorized under the teletext rules also qualify as permissible activities under the new authority for VBI telecommunications services. Inasmuch as the new authority is consistent with the policies established in the teletext proceeding and preserves the teletext regulations that are specific to that type of service, the new rules will replace the teletext rules on a one-for-one basis as appropriate. The rules for the VBI communications authority are set forth in Appendix B.

Procedural Matters

30. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final regulatory flexibility analysis is:

I. *Need for and purpose of the rules:* The Commission has concluded authorization of VBI telecommunications services will provide additional opportunities for extending and diversifying the services provided by television stations, will improve the efficiency of spectrum utilization, and may assist in satisfying the demonstrated need for additional paging services.

II. *Summary of issues raised by public comments in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result:*

A. *Issues raised:* No issues or concerns were raised specifically in response to the initial regulatory flexibility analysis. The responses in general comments are all favorable to authorization of expanded use of the VBI and support full discretion for licensees in determining how these facilities are to be used.

B. *Assessment:* The Commission considers the absence of specific claims of adverse impact with respect to its proposals for expanded use of the VBI as indicative of their lack of potential for negative effects on small businesses. We believe that the open authority for use of the VBI provided by this action will provide new opportunities for participation by small businesses in the various markets for telecommunications services.

C. *Changes made as a result of such comments:* None.

III. *Significant alternatives considered and rejected:*

The Commission's alternatives were: (1) To not authorize expanded use of the VBI at all or (2) to authorize expanded use of the VBI but with restrictions on either technical systems or services. To refrain from providing the expanded authority would forego the public interest objectives sought in this rule making. With respect to the second alternative, a more restrictive authorization likely would limit the realization of the potential benefits of VBI telecommunications services and would represent an unnecessary intrusion by the government into the affairs of private businesses.

31. Authority for adoption of the rules set forth herein is provided under sections 2, 4(i), and 303 of the Communications Act of 1934, as amended.

32. Accordingly, it is ordered, that Parts 2, 73 and 76 of the Commission's Rules are amended as set forth in Appendix B, effective March 4, 1985.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1982; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Parties Filing Comments

1. Financial News Network, Inc.
2. Public Broadcasting Service
3. Gerald A. Rosander, Superintendent for Schools, San Diego County Office of Education
4. CBS, Inc.
5. Joint Comments of Operating Telephone Companies
6. American Broadcasting Companies, Inc.
7. Joint Comments of TV Station Licensees
8. Cosmos Broadcasting Corporation
9. Tribune Broadcasting Company
10. Satellite Network Delivery Corporation
11. Gill Industries
12. Cybernetic Data Systems, Inc.
13. National Broadcasting Company, Inc.
14. National Association of Broadcasters

Parties Filing Reply Comments

1. Public Broadcasting Service
2. Satellite Network Delivery Corporation
3. Joint Reply Comments of TV Station Licensees
4. National Cable Television Association
5. Cybernetic Data Systems, Inc.

Appendix B

Chapter I of Title 47 of the Code of Federal Regulations is amended and revised as set forth below.

1. Section 2.106 is amended by adding footnote NG142 to the Table of Allocations to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

NG142 TV broadcast stations authorized to operate in the bands 54–72, 76–88, 174–216, 470–512, and 512–806 MHz may use a portion of the television vertical blanking interval for the transmission of telecommunications signals, on the condition that harmful intereference will not be caused to the reception of primary services, and that such telecommunications services must accept any interference caused by primary services operating in these bands.

* * * * *

2. Section 73.646 is revised to read as follows:

§ 73.646 Telecommunications Service on the Vertical Blanking Interval.

(a) Telecommunications services permitted on the vertical blanking interval (VBI) service include the transmission of data, processed information, or any other communication in either a digital or analog mode.

(b) Telecommunications service on the VBI is of an ancillary nature and as such is an elective, subsidiary activity. No service guidelines, limitations, or performance standards are applied to it. The kinds of service that may be provided include, but are not limited to, teletext, paging, computer software and bulk data distribution, and aural messages. Such services may be provided on a broadcast, point-to-point, or point to multipoint basis.

(c) Telecommunications services that are common carrier in nature are subject to common carrier regulation. Licensees operating such services are required to apply to the Commission for the

[26] *See, Memorandum Opinion and Order* in BC Docket No. 81-741, paras. 30 and 31 and *Second Report and Order* in Docket No. 21323, *supra*, paras. 26 and 27.

appropriate authorization and to comply with all policies and rules applicable to the particular service.

(d) Television licensees are authorized to lease their VBI telecommunications facilities to outside parties. In all arrangements entered into with outside parties affecting telecommunications service operation, the licensee or permittee must retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material that it deems is appropriate or undesirable. The licensee or permittee is also responsible for all aspects of technical operation involving VBI telecommunications services.

(e) The grant or renewal of a TV station license or permit will not be furthered or promoted by proposed or past VBI telecommunications service operation; the licensee must establish that its broadcast operation serves the public interest wholly apart from VBI telecommunications service activities. (Violation of rules applicable to VBI telecommunications services could, of course, reflect on a licensee's qualifications to hold its license or permit.)

(f) TV broadcast stations are authorized to transmit VBI telecommunications service signals during any time period, including portions of the day when normal programming is not broadcast. Such transmissions must be in accordance with the technical provisions of § 73.682

3. Section 73.621 is amended by revising paragraph (f) to read as follows:

§ 73.621 Noncommercial educational TV stations.

* * * * *

(f) Telecommunications Service on the Vertical Blanking Interval. The provisions governing VBI telecommunications service in § 73.646 are applicable to noncommercial educational TV stations.

4. Section 73.682 is amended by adding new paragraph (a)(24) to read as follows:

§ 73.682 Transmission standards.

(a) * * *

(24) Specific scanning lines in the vertical blanking interval may be used for the purpose of transmitting telecommunications signals in accordance with § 73.646, subject to certain conditions:

(i) Telecommunications signals may be transmitted on Lines 10–18 and 20, all of Field 1 and Field 2. Use of specific lines is to be in accordance with Schedule I.

(ii) No observable degradation may be caused to any portion of the visual or aural signals.

(iii) Telecommunications signals must not produce emissions outside the authorized television channel bandwidth. Digital data pulses must be shaped to limit spectral energy to the nominal video baseband.

(iv) Transmission of emergency visual messages pursuant to § 73.150 must take precedence over, and shall be cause for interrupting, a service such as teletext that provides a visual depiction of information simultaneously transmitted on the aural channel.

(v) A reference pulse for a decoder associated adaptive equalizer filter designed to improve the decoding of telecommunications signals may be inserted on any portion of the vertical blanking interval authorized for data service, in accordance with the signal levels set forth on Schedule I.

(vi) All lines authorized for telecommunications transmissions may be used for other purposes upon prior approval by the Commission.

* * * * *

5. Section 73.3613(d) is revised to read as follows:

73.3613 Filing of contracts.

* * * * *

(d) The following contracts, agreements, or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC: Contracts relating to the sale of broadcast time to "time brokers" for resale; subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the TV vertical blanking interval; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs, and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators and other engineering personnel.

6. Section 76.64 is revised to read as follows:

§ 76.64 Carriage of subscription television programs and telecommunications services on the vertical blanking interval.

The provisions of §§ 76.55, 76.57, 76.59, 76.61, and 76.63 do not require carriage of any subscription TV program or any telecommunications service transmitted on the vertical blanking interval.

[FR Doc. 85–2720 Filed 1–31–85; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 15

[FCC 85–23]

Modify the Requirement That 49 MHz Low Power Communication Devices be Self-Contained

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC is amending its rules for 49 MHz low power communication devices to relax a design requirement that such devices be completely self contained. This action is necessary to remove an impediment to certain types of low power transmitters, which can otherwise satisfy the technical specifications designed to control radio interference. The intended effect of this action is to make the requirements for 49 MHz devices more flexible, while still ensuring against radio interference.

EFFECTIVE DATE: March 4, 1985.

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

FOR FURTHER INFORMATION CONTACT: Julius P. Knapp, Office of Science and Technology, Technical Standards Branch; Washington, D.C. 20554, (202) 653–8247.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 2

Communications equipment.

Order

Amendment of Part 15 to modify the requirement that 498 MHz low power communication devices be self-contained; FCC 85–23.

Adopted: January 11, 1985.
Released: January 24, 1985.
By the Commission.

1. Sections 15.117 and 15.118 of Part 15 provide for operation of general purpose low power communication devices in the 49 MHz band without individual license. Equipment operating under these rules includes toy walkie-talkies and a variety of short-range radio control devices. Section 15.118(e) requires that the device be completely self-contained, with certain minor exceptions as discussed below. The Commission is receiving a growing number of requests for interpretation of the "self-contained" requirement and how it applies to specific types of

devices.[1] It has become clear from these inquiries, that some types of equipment are precluded by the "self-contained" requirement, even though they otherwise are capable of satisfying the technical regulations designed to control interference. This *Order* partially relaxes the "self-contained" requirement, in such a way as to remove unnecessary constraints on the types of devices that might operate under the 49 MHz provisions.

2. The provisions of operation of low power communication devices in the 49 MHz band were adopted of February 4, 1976, by *Report and Order* in Docket No. 20119, released February 12, 1976, 41 FR 7394, February 18, 1976. The regulations were subsequently modified by *Memorandum Opinion and Order* adopted January 13, 1977, released January 19, 1977, 42 FR 4461, January 25, 1977. Operation was permitted on five specific 49 MHz frequencies as set forth in § 15.117. Technical specifications designed to control interference were set forth in § 15.118 and pertain to field strength of the signal at the carrier frequency, carrier frequency tolerance, field strength of spurious emissions, bandwidth of the transmitted signal, and levels of power line conducted emissions.

3. In addition to the technical specifications, a design requirement was set forth in subparagraph (e) of § 15.118, which reads as follows:

Section 15.118(e)—The device shall, with the exception of the microphone, be completely self-contained with the antenna permanently attached to the enclosure containing the device. The microphone may be external to the device, provided it is permanently attached to the enclosure with a cable not longer than 1.5 meters.

This requirement was rooted in the fact that the radiated signal from the device, and hence its interference potential, can increase by the attachment of an external antenna or reradiation from accessory cables. Also, there had been concern that the effective radiated signal strength might be increased by placing the antenna at a remote elevated location. The "self-contained" requirement has been interpreted to preclude such things as connectors for external input signals or connectors for accessories such as headsets (earpiece and microphone). Devices are permitted to operate from standard AC electric power, provided the power cord is permanently affixed to the unit. Provision for connection to a battery charger is permitted, on the condition that the transmitter must be designed so as not to transmit when in the battery charge mode.

4. Manufacturers have, over the years, received FCC equipment authorization for a variety of devices which satisfy the 49 MHz provisions, including walkie-talkies and radio control devices. However, manufacturers are more frequently describing ideas for products which are precluded by the "self-contained" design requirement, but allegedly could satisfy the technical requirements. For instance, several parties have expressed interest in transmitting data between computer equipment under these rules; however, since the "self-contained" requirement disallows external input signals, such operation is not feasible. It may be possible to design such a device to have reasonable assurance of compliance with the technical requirements irrespective of the type or length of the input cable or characteristics of the input signal. In another instance, a manufacturer designed a short range walkie-talkie communication system for use by motorcyclists, where the "self-contained" requirement necessitated both the driver and passenger headsets to be connected to the transmitter by fixed connections. For safety reasons, this was an undesirable situation. It appeared that the intent of the rules could be satisfied by allowing use of plug-in jack connectors and testing the unit with the intended accessories.

5. It was not the intent of the "self-contained" requirement to artificially restrict the types of devices that might operate under the 49 MHz provisions. In fact, these provisions were intended to permit development of a broad range of general purpose low power communication devices. We believe, upon review, that the "self-contained" design requirement can be removed without compromising interference potential, provided that care is taken when performing compliance measurements to ensure that the technical specifications will be met under ordinary operating conditions. It is worth noting that, with the exception of cordless telephones, other Part 15 low power communication devices are not subject to a "self-contained" requirement, and this has not proven to be an impediment to compliance with the technical standards.[2]

6. Accordingly, we are amending § 15.118(e), to delete the requirement that the device be self-contained and, in its place, adding a requirement that devices which provide for connection of accessories, including external input sources, be tested with accessories attached. We are also adding a statement that emissions tests shall be performed with the device and accessories configured in a manner which tends to maximize radiation, within the range of variations that can be expected under normal operating conditions. This is consistent with our measurement policy for other Part 15 devices. Section 15.118(b), which restricts emission bandwidth, is being amended to require that devices which provide for an external input signal be checked for compliance when modulated by the intended type of input signal.

7. We are retaining the requirement that the antenna be permanently mounted on the enclosure containing the device. The antenna plays a much more critical role in determining compliance than do accessory devices. Also, deletion of the present requirement would likely result in separate antennas being placed at elevated locations, which would greatly increase the interference potential of these devices. While it is possible that, through use of a long microphone cable, the device itself might be placed at a high elevation, we consider this unlikely for a number of reasons, such as the practical need to have ready access to the equipment for repair, battery replacement, etc.

8. We do not believe that this rule relaxation raises any significant issues nor do we expect it to adversely affect any member of the general public. There would be little or no benefit in soliciting public comment in view of the minor nature of the change. Accordingly, as provided in Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), we find for good cause that public comment in this matter is unnecessary.

9. Authority for the amendment set out in the attached Appendix is contained in sections 4(i), 302, and 303(r) of the Communications Act of 1934, as amended.

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[1] Correspondence concerning the regulations for low power communication devices can be found in file 31030/EQU/4-2-4, located in the Office of Science and Technology, Technical Standards Branch.

[2] The "self-contained" requirement for cordless telephones is set forth in § 15.233(e). Because the circumstances are different, we do not find cause to modify the "self-contained" requirement for cordless telephones. To begin with, we note that the "self-contained" requirement for cordless telephones contains additional language permitting use of certain accessories. Secondly, we are concerned that modifying the requirement in such a way as to permit separate input signals, as we are doing here, would open up the cordless telephone frequencies to a host of other type of devices, resulting in increased interference for cordless telephones.

10. In view of the above, it is ordered that § 15.118 of Part 15 is amended as set forth in the attached Appendix, effective March 4, 1985.

11. For further information regarding this matter, contact Julius P. Knapp at (202) 653–8247.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 15—[AMENDED]

Part 15 of the FCC Rules, 47 CFR 15.118, is amended as follows:

1. Section 15.118 paragraphs (b) and (e) are revised to read as follows:

§ 15.118 Technical specification for the band 49.82–49.90 MHz.

* * * * *

(b) Emission shall be confined within a 20 kHz band centered on the carrier frequency. Devices that provide for an external input signal shall be checked for compliance with this requirement when modulated by the intended type of input signal.

* * * * *

(e) The antenna shall be permanently attached to the enclosure containing the device. If the device provides for connection of external accessories, including external electrical input signals, the device must be tested with accessories attached. The emissions tests shall be performed with the device and accessories configured in a manner which tends to produce maximized emissions within the range of variations that can be expected under normal operating conditions.

* * * * *

[FR Doc. 85–2683 Filed 1–31–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[Gen. Docket No. 83–1009; FCC 84–638]

Multiple Ownership of AM, FM and Television Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Memorandum Opinion and Order* modifies the Commission's *Report and Order* (July 26, 1984) in this proceeding. In its previous decision the Commission repealed the seven station rule, replacing it with a new rule limiting multiple ownership to 12 AM, 12 FM and 12 TV stations. Today's action retains the "12 station rule" with respect to AM, FM, and television broadcast facilities. With respect to TV, an additional ownership limit has been adopted based on audience reach. This new limit allows entities to acquire cognizable interests in TV stations reaching a maximum of 25 percent of the national audience, as determined by Arbitron ADI market rankings of the percentage of national TV households contained in each market. The Commission, however, will attribute only 50 percent of a market's ADI reach to owners of UHF stations for the purposes of calculating this audience reach cap. To facilitate minority ownership in broadcasting, group owners of radio and TV stations may acquire up to a maximum of 14 broadcast facilities, provided at least two of the stations in their portfolio are minority-controlled. Owners having congnizable interests in minority-controlled television stations will be allowed to reach no greater than 30 percent of the national audience, provided that at least 5 percent of the audience reach comes from minority-controlled stations. Minority control is defined as a station having more than 50 percent ownership. Finally, the automatic sunset provision for these rules which was contained in the *Report and Order* has been eliminated.

EFFECTIVE DATE: March 4, 1985; however, the rules for television broadcasting shall not become operative until April 2, 1985.

FOR FURTHER INFORMATION: David L. Donovan, or Laurel R. Bergold, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73:

Radio broadcast, Television.

Memorandum Opinion and Order

In the matter of amendment of § 73.3555 [formerly §§ 73.35, 73.240 and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations; Gen. Docket No. 83–1009.

Adopted: December 19, 1984.
Released: February 1, 1985.

By the Commission. Chairman Fowler concurring in part; Commissioner Dawson concurring in part and issuing a statement; Commissioner Rivera concurring in part and issuing a statement at a later date; Commissioner Patrick dissenting in part and issuing a statement.

1. Before the Commission are petitions for reconsideration of the *Report and Order* [1] in the above-captioned proceeding, filed by the following parties: Association of Program Distributors ("APD"); Cox Communications, Inc. ("Cox"); Hubbard Broadcasting, Inc. ("Hubbard"); the Motion Picture Association of America, Inc. ("MPAA"); the National Association of Television Program Executives, Inc. ("NATPE"); the National Black Media Coalition ("NBMC"); Victory Television, Inc. (Victory); and Westinghouse Broadcasting and Cable, Inc. ("Group W").[2] Pleadings responsive to these petitions have been filed by various parties.[3] Before addressing the specifics of these pleadings, we shall briefly restate our initial decision and then summarize the actions we are taking here to amend that decision.

2. In the *Report and Order*, the Commission considered whether or not to repeal or modify the national multiple ownership rule commonly known as the "seven station rule". Under this rule a single individual or entity was prohibited from holding a cognizable ownership interest in more than seven AM, seven FM and seven TV broadcast

[1] *Report and Order* in Gen. Docket No. 83–1009 ("*Report and Order*"), FCC 84–350, 49 FR 31877 (August 9, 1984), *appeal docketed sub nom. Black Citizens for Fair Media v. FCC*, No. 84–1503 (D.C. Cir. filed October 9, 1984).

[2] The National Association of Black Owned Broadcasters ("NABOB") filed an untimely Petition for Reconsideration accompanied by a Motion for Acceptance of Late-Filed Petition for Reconsideration. Section 405 of the Communications Act of 1934, *as amended*, and the counterpart provisions of § 1.429(d) of our rules, require petitions for reconsideration to be filed within 30 days of the date on which public notice is given of the underlying order. 47 U.S.C. 405 and 47 CFR 1.429(d). Because we lack authority to waive the requirements set forth in the Act, we must deny NABOB's motion. While we cannot consider NABOB's pleading as a formal petition for reconsideration, we note that the Commission has, in other contexts, treated late filed petitions as informal comments to a proceeding. We believe it appropriate to treat NABOB's pleading in a similar fashion.

Metromedia, Inc. ("Metromedia") did not request reconsideration of the Commission's action, but did file a statement in response to the *Report and Order*.

[3] Parties filing in opposition to or commenting on the reconsideration petitions were: (1) American Broadcasting Companies, Inc. ("ABC"); (2) Association of Independent Television Stations, Inc. ("INTV"); (3) Black Citizens for Fair Media, League of United Latin American Citizens, National Association for the Advancement of Colored People, National Association for Better Broadcasting, National Conference of Black Lawyers Communications Task Force and the Telecommunications Research Action Center, filing jointly ("BCFM *et al.*"); (4) Capital Cities Communications, Inc. ("Capital Cities"); (5) CBS, Inc. ("CBS"); (6) Cox Communications, Inc. ("Cox"); (7) Lorimar Productions, Inc. ("Lorimar"); (8) National Association of Broadcasters ("NAB"); (9) National Broadcasting Company, Inc. ("NBC"); (10) Spanish International Communications Corporation ("SICC"); (11) Taft Broadcasting Company ("Taft"); and (12) Turner Broadcasting System, Inc. ("TBS"). Replies were filed by the National Association of Independent Television Producers and Distributors ("NAITPD"), Cox and MPAA. A late response was filed by the Association of Maximum Service Telecasters ("MST").

stations (of which no more than five could be VHF stations).[4] After careful review of the extensive record in this proceeding, we determined that repeal of the seven station rule would not adversely affect the Commission's traditional policy objectives of promoting viewpoint diversity and preventing economic concentration. Indeed, we found that elimination of the rule might well further these objectives. We concluded that repeal of the seven station rule was, on balance, in the public interest. We also recognized, however, that the complete and abrupt elimination of our national multiple ownership rules might engender a precipitous and potentially disruptive restructuring of the broadcast industry. Therefore, we elected to adopt a transitional limit of 12 AM, 12 FM and 12 TV broadcast stations per owner. This transitional limit was to terminate automatically six years from the effective date of the *Report and Order* unless intervening Commission experience indicated that retention of the rule was required. On August 9, 1984, the Commission stayed the effective date of the *Report and Order*, insofar as it relates to TV station ownership, until 60 days after the reconsideration in this proceeding or until April 1, 1985, whichever occurred later.[5] We also note that Congress enacted a moratorium on the implementation of the *Report and Order*.[6]

3. On reconsideration, we are convinced that our underlying conclusions in the *Report and Order* remain correct. We nonetheless believe that certain aspects of our initial action should be modified. In particular, we now believe that, in addition to the existing 12 station limit, a new TV station multiple ownership restriction, based on a percentage of national audience reach, should be adopted. This new audience reach limit would allow group owners to expand to the point where their TV stations have access to no more than 25 percent of the national audience. Moreover, we find that this new audience reach limit should be tailored to account for the distinct characteristics of UHF television stations. Further, we believe that both the audience reach and numerical station limits should be adjusted to promote minority ownership of broadcast facilities. Finally, we believe that the sunset to the national multiple ownership rules should be eliminated.

Summary of Petitions for Reconsideration

4. While the issues raised on reconsideration are complex and varied, certain fundamental conclusions of the *Report and Order* have not been challenged by any petitioning party. None of the petitioners dispute our determination that the seven station rule should be revised. In addition, none of the petitioners object to our conclusion that these revisions should permit some degree of increased group ownership. Furthermore, the arguments raised in the petitions, for the most part, are restricted to television broadcasting. With one exception, the petitioners do not specifically question any of the determinations made with regard to the relaxation of the restrictions on multiple ownership of radio stations. We turn now to a brief summary of the major issues raised in the petitions for reconsideration.

5. *Network Ownership.* Alleging that the networks dominate television broadcasting, MPAA, APD and Victory oppose any repeal or relaxation of the seven station rule as it applies to the networks. MPAA defines television as a distinct product market, and claims that the 1953 allocation scheme essentially insulates the networks from competition by making it impossible for a fourth network to effectively compete by acquiring sufficient VHF stations in the largest markets. Petitioner also asserts that the growth in independent stations has not eroded network dominance. Moreover, the petitioner claims that alternate video technologies will not provide the networks with sufficient competition in the forseeable future. On the contrary, MPAA contends that repeal of the rule could impair the growth of these technologies by enabling the networks, which are already beginning to invest in new technologies, to exert greater market control over their development.

6. MPAA, APD and Victory contend that, as a policy matter, repeal of the seven station rule will diminish the opportunities for new independent programming, ad hoc networks and the development of a fourth network. MPAA, APD and Victory claim that the *Report and Order* failed to take into account the differences between affiliated stations and owned and operated stations. Specifically, they assert that affiliates have a greater economic incentive to pre-empt network programming and purchase programming from independent producers than do network owned stations. The petitioners contend that the difference in clearance rates between owned and operated stations and affiliated stations provide independent producers with a "window of opportunity" for access to prime time programming which is essential to the viability of alternative networks. APD warns that the foreclosure of independent programming will be further exacerbated as the internal production limitations in the Justice Department's consent decrees are phased out.[7] Victory specifically claims that additional network acquisitions will have "dire" consequences for the production and syndication industries.

7. MPAA, APD and Victory assert that increased network ownership will subvert the prime time access rule. In this connection, they argue that increasing the number of owned and operated stations provides networks with an incentive to produce "local in-house" programming for use by these stations during the prime time access period. This, in turn, will reduce the number of stations to which independent producers might market their programs and will therefore lower the incentive of such producers to create and distribute independent programming. Moreover, this adverse effect on independent program sources will be exacerbated by the fact that newly acquired network owned and operated stations are likely to be in the large television markets that are most important to independent producers in marketing their programs. Further, they contend that the incentive to produce their own programming will reduce the networks' need for independent programming during other day parts where there are traditionally lower clearance rates. NATPE also expresses concern over the prime time access rule, criticizing the Commission for failing to study carefully the potential impact on the prime time access rule before taking action to modify the seven station rule.

8. MPAA asserts that there is no evidence to support the contention that the networks' owned and operated stations provide superior performance when compared with other non-network group owned stations. The petitioner also disputes our conclusion that the networks do not impose monolithic viewpoints on their owned and operated stations. Furthermore, MPAA asserts that the Commission has emphasized the quality and quantity of programming contrary to our traditional concepts of diversity which focus on independent

[4] 47 CFR 73.3555(d), deleted in *Report and Order*, supra n.1.

[5] *Order* in Gen. Docket No. 83-1009, FCC 84-400, 49 FR 32581 (August 15, 1984).

[6] *See* Second Supplemental Appropriations Act, Pub. L. No. 98-396, § 304, 98 Stat. 1369, 1423 (1984).

[7] *See* para. 28, *supra*.

ownership rather than program content. Similarly, MPAA challenges the notion that network growth would result in greater management efficiencies and better programming. MPAA contends that there is no evidence to suggest that superior management skills are confined to the networks. On the contrary, MPAA states that non-network groups may be doing a superior job because they are forced to match programming to local tastes and to garner audiences without the benefits of networking.

9. MPAA also alleges that elimination of the seven station rule as applied to the networks will increase economic concentration and anticompetitive activity in both the advertising and program acquisition markets.[8] The petitioner contends that increasing network ownership of stations will restrict the development of the national spot advertising market. MPAA argues that the networks, by purchasing affiliates in the larger markets, will be able to control or eliminate spot advertising in markets with the greatest audience reach. Such acquisitions will prevent national spot advertisers from clearing the larger markets, thereby eliminating the emerging national spot market as an effective competitive restraint on network advertising prices. MPAA also claims that an increase in network ownership enhances the danger of collusion among the three networks by making it easier for them to fix both local and network advertising rates.

10. MPAA also states that increased network ownership of stations will have adverse economic consequences on the program acquisition market since the unique economic incentives of an owned and operated station will provide a greater incentive for networks to behave in an anticompetitive manner. For example, MPAA asserts that network owned stations could, by raising their advertising rates, cause advertising to shift to independent stations, thereby driving up the price of independent advertising time. This, in turn, would permit the networks to raise the prices of programming that they supply to independent stations and thus to increase network profits. Alternatively, MPAA contends that, by warehousing the best programming, the networks could reduce the quality of programming available to independent stations and thereby reduce the audience—and advertising revenues—of these stations. The resulting increased demand for advertising on network owned stations would permit the owned and operated stations to raise their advertising rates.[9]

11. *Adoption of an Audience Reach Cap.* In addition to the twelve-station numerical cap, Group W and Cox urge the Commission to add an ownership limit based on audience reach as measured by Arbitron Area of Dominant Influence (ADI) data. Group W requests that the Commission adopt a VHF audience reach cap of 25 percent, whereas Cox urges adoption of a 27.5 percent limit. While not proposing a specific percentage for the audience cap, MPAA urges the Commission to adopt an audience reach limitation for non-network group owners that will ease the existing restrictions. In this regard, MPAA argues that it is incumbent upon the Commission to increase the opportunities and incentives of non-network owners to compete effectively against the networks.

12. *UHF Discount.* In establishing an audience reach cap, Group W, Cox and MPAA each propose that the Commission adopt rules which take cognizance of the difficulties faced by UHF stations. Both Cox and Group W propose an additional reach limit of 2.5 percent for UHF stations. While not proposing a specific percentage, MPAA urges the Commission to establish a "slightly higher" market penetration cap for non-network group owners with substantial UHF interests.

13. *Minority Incentives.* NBMC and MPAA urge the Commission to promote minority ownership in broadcasting by including specific incentives in the ownership rules. NBMC urges the Commission to adopt the minority ownership policy contained in H.R. 6134.[10] This House bill provides for a five percent increase in the audience reach cap and a corresponding increase in the numerical station ownership limitation proposed in the bill for persons acquiring interests in stations in which minorities hold ownership interests exceeding 50 percent. MPAA asserts that the Commission should take cognizance of the special contributions minorities make to viewpoint diversity by permitting a "slightly higher" market penetration for non-network group owners with substantial minority interests.

14. *Radio Ownership.* NBMC requests the Commission to eliminate the current ownership distinction between AM and FM stations. Instead it urges the Commission to adopt a single standard which would limit ownership to 14 radio stations without regard to station type.

15. *Statellite Station Exemption.* Hubbard requests the Commission to create an exemption from any numerical limits that may be adopted by the Commission for stations which are primarily operated as satellite stations. It contends that the adoption of its proposal will encourage the development of over-the-air television service to smaller communities.

16. *Sunset Provision.* Several parties specifically request the Commission to reconsider its decision to adopt a six year sunset provision. Because the Commission has no means in which to accurately predict marketplace conditions in 1990, Group W asserts that the Commission's adoption of a sunset provision is at odds with its oversight responsibilities mandated by the Communications Act. MPAA states that it is unrealistic for the Commission to expect effective competition to the networks to develop during the short transition period. NBMC claims that the Commission will be unable to assess the actual impact of the relaxation of the rule because broadcasters will purposefully avoid anticompetitive behavior during the six year transition.

Discussion

A. Network Expansion and Relaxation of the Seven Station Rule

1. Viewpoint Diversity

17. In support of its assertion that the Commission should continue to apply the seven station rule to the networks, MPAA argues that our decision to repeal the rule relied on a diversity analysis at serious odds with traditional diversity concepts. It contends that the Commission erred in relying on considerations such as the quality and quantity of programming in its diversity analysis,[11] stating that such reliance "departs from proper insistence on objective quantification of ownership as the sole criterion for implementing multiple or cross-ownership restrictions."[12] Moreover, MPAA suggests that the Commission must give controlling weight to diversity considerations in assessing the need to retain or revise the national multiple ownership rules.[13]

[8] In this respect, MPAA suggests that the Commission should consider the acquisition of additional broadcast outlets in different geographic markets as market extension conglomerate mergers. *Id.*

[9] As MPAA acknowledges, these arguments presuppose repeal of existing Commission rules which generally preclude networks from participating, either directly or by financial interest, in the program syndication market. *See* 47 CFR 73.658(j).

[10] H.R. 6134, 98th Cong., 2d Sess. section 1 (1984).

[11] *Petition for Reconsideration of Motion Picture Association of America, Inc.* at 25.

[12] *Id.*

[13] To the extent MPAA contends that the Communications Amendments Act of 1982 (lottery

Continued

18. We disagree. The Commission has traditionally recognized that revision of the national multiple ownership rules necessarily involves a balancing of diversity considerations with other competing policy objectives. Thirty years ago, the Commission stated that:

> Clearly if the only relevant consideration were implementation of the policy of diversification, an absolute limitation of one broadcast station to any one person or persons under common control would best serve the public interest. But, of course, that is not the case. The multiple ownership of broadcast stations does play an important role in our nation-wide broadcast system. The ownership of broadcast stations in major markets by the networks, for example, is an important element of network broadcasting. Our nation-wide system of broadcasting as we know it today requires that some multiple ownership of broadcast stations be permitted. We have always recognized these needs and have by rule permitted multiple ownership of broadcast stations in the light of such (other and competing) considerations. Here too it is our view that the greater good which will flow from the proposed rule offsets the disadvantage resulting from permitting individual licensees to own a larger number of stations.[14]

The courts have also recognized that diversity is not absolute. Ultimately, after consideration of all relevant factors, the Commission must evaluate whether or not its decision maximizes service to the public.[15] Moreover, the *Report and Order* did not substitute a concern with diversification of ownership for one that is predicated solely on the presentation of certain kinds of programming. Rather, our decision balanced the need for a presumptive rule equating ownership diversity at the national level with viewpoint diversity against the demonstrable benefits of group ownership.[16] In the context of this balancing process, we found that national ownership diversity is not of primary relevance in promoting viewpoint diversity. In this regard we noted that

> the most important idea markets are local . . . [N]ational broadcast ownership limits, as opposed to local ownership limits, ordinarily are not pertinent to assuring a diversity of views to the constituent elements of the American public.[17]

The petitioners have presented no new facts or arguments which warrant reconsideration of the conclusion contained in the *Report and Order* that repeal of the seven station rule in its entirety would not impact adversely on the diversity of viewpoints.

19. MPAA bases its arguments concerning the need for partial retention of the seven station rule to restrain network growth upon the alleged dominance of the networks in the television market. Disputing the Commission's finding that the information market is the relevant product market, MPAA states that in considering viewpoint diversity, the Commission should separately assess the television market which it characterizes as pervasive, unique and concentrated.

20. We decline to adopt MPAA's narrowly defined product market. As we stated in the *Report and Order*, the television market is not the appropriate product market for diversity purposes. In that decision, we found that there exists a broad product market that is comprised of numerous information sources,[18] including cable television, newspapers, magazines and periodicals.[19] We determined that these media compete with broadcast outlets for the provision of information.[20] Indeed, the fact that different media are important and viable substitutes for each other is reflected in our local cable and television, newspaper and broadcast, and radio and television cross-ownership rules.[21] The fact that the various media may not be perfect substitutes for one another does not negate their status as competing, antagonistic sources of information for the purposes of diversity analysis. In sum, MPAA offered no new evidence to rebut our finding that the relevant market here is the information services market. Moreover, MPAA does not argue that the networks or any other information service provider is dominant in the product market which the Commission has found to be the relevant one for diversity purposes, nor has it challenged our findings concerning the exponential growth in the number of broadcasting and information outlets in that market. We continue to believe, therefore, that the vast increase in the number of information services is an important factor which attenuates the need for a presumptive national ownership rule as a means of assuring diversity.[22]

21. Similarly, we do not accept petitioner's arguments that we improperly balanced the benefits of group ownership against our traditional diversity concerns. MPAA argues that an increase in the diversity of ownership on a national level necessarily results in an increase in the diversity of independent viewpoints and, conversely, any station acquisition by a group owner decreases viewpoint diversity. For the reasons set forth in the *Report and Order*, we disagree with the petitioner's analysis. In our decision, we found that the uncontroverted evidence contained in the record indicates that group owned stations do not impose monolithic viewpoints on their various holdings. To the contrary, we noted that the economics of each local market require autonomous decisions by each

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[vision] requires retention of the seven station rule or some particular form of national multiple ownership restriction, we find its contentions unpersuasive. The statute itself is silent on the matter and the legislative history of that statute provides no support for the contention that Congress, in enacting the subject provisions, was concerned with the national multiple rules, or that it mandated retention of the seven station rule. *See* H.R. Rep. No. 97-765, 97th Cong., 2d Sess. 40 (1982); *Initial Reply Comments of Cox Communications, Inc.*, filed February 21, 1984.

[14] *Report and Order* in Docket No. 10822, 43 FCC 2d 1, 2801-2 (1954).

[15] *FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. 710, 804-805 (1978). Even assuming, *arguendo*, that we modified our traditional analysis to consider actual programming, petitioners present no reason why such an approach is beyond our discretion in the context of a rulemaking proceeding. We are not presented here with a situation where previously articulated policies are being applied to facts involving specific applicants in adjudicatory contexts. *See, e.g., Committee for Community Access* v. *FCC*, 737 F.2d [illegible] (D.C. Cir. 1984). Within the context of a rulemaking proceeding, the Commission has broad discretion in analyzing relevant facts in reaching its decision.

[16] *Report and Order* at para. 62.

[17] *Id.* at para. 60. *See also id.* at para. 32, *supra*.

[18] In the *Report and Order*, we observed that there were 4747 AM stations, 4717 FM stations, 1169 TV stations and 6400 cable television systems. *Report and Order* at paras. 34-35. Moreover, since the adoption of the seven station rule, our data indicate that the number of radio stations, television stations and cable systems has increased by 301 percent, 587 percent and 4267 percent, respectively. *Id.* Furthermore, we stated that the relevant product market includes a number of emerging technologies, such as multipoint distribution systems, subscription television stations, direct broadcast satellite service and video cassette recorders. *Id.* at para. 35. We also noted that the evidence of record reflects that there are 1711 daily newspapers, 4742 non-daily newspapers, 1500 consumer magazines and 4507 other periodicals. *Id.* at para. 25. *See also Notice of Inquiry* in Gen. Docket No. 84-282, FCC 84-140 (released May 8, 1984) at para. 38.

[19] *Report and Order* at para. 25.

[20] *Id.*

[21] *See* 47 CFR 73.3555(b) [one-to-a-market]; 47 CFR 76.501 [co-located cable-broadcast TV cross-ownership]; and 47 CFR 73.355(c), [co-located newspaper-broadcast cross-ownership].

[22] We also note that none of the petitioners challenge our conclusion that the local market is the primary market for purposes of diversity analysis. As we found in the *Report and Order*, the area from which consumers can select mass media alternatives is the local market and to this extent national ownership restrictions bear no necessary relation to the number of antagonistic information outlets available in any particular local market. *Report and Order* at para. 32.

station with respect to its editorial judgments.[23]

22. Even assuming that there is some slight reduction in viewpoint diversity at the national level, however, the petitioners have presented no new evidence which effectively challenges our finding that this detriment is outweighed by the substantial benefits of group ownership. We found that group ownership affirmatively promotes diversity of viewpoints by promoting organizational forms which facilitate new programming; consequently, we concluded that the seven station rule, in operation, may actually inhibit new programming which enhances diversity in local markets.[24]

2. Economic Competition

23. In the *Report and Order*, we concluded that repeal of the rule of sevens would not promote economic concentration.[25] We adopted the conclusion of the Department of Justice that "elimination of the Seven Station Rules will raise little risk of adverse competitive effects in any market," and that "license transfers involve no significant competitive risk merely because the result is common ownership of more than seven stations in a broadcast service." [26]

24. The *Report and Order* adopted the analysis of the Department of Justice that advertising markets are essentially comprised of two distinct submarkets: the national advertising market and the local spot market.[27] The petitioners on the record before us provide no substantive evidence to dispute this market definition. We found that repeal of the rule of sevens would have little or no effect on national advertising rates since the networks, through their affiliates, and not their owned and operated stations, already reach most markets throughout the country. As a result, the purchase of an affiliate by a network would have only a *de minimis* impact on concentration in the national advertising market.

25. In response, MPAA argues that the national spot market serves as a competitive check against network advertising rates. This petitioner and others contend further that if the networks are allowed to purchase their affiliates, an important vehicle for the development of a competitive national spot market will be foreclosed because owned and operated stations have lower clearance rates for independent programs than network affiliated stations. They argue that lower clearance rates will decrease the available time for the national spot market while increasing network advertising revenues.

26. We find these contentions unpersuasive. Of particular significance is the fact that they fail to establish the necessary link between increased network ownership and foreclosure of the national spot market.[28] In any event, we agree with the Department of Justice that neither the local spot or emerging national spot markets are viable substitutes for the national network advertising market. Even assuming, *arguendo*, that the national spot market is a substitute for network advertising, the petitioners are unable to isolate or quantify the extent of any competitive harm resulting from network acquisition of their affiliated stations. Accordingly, petitioners fail to present any persuasive evidence that repeal of the national ownership rules, even as to the networks, would impair economic competition in the national advertising market.

27. MPAA also alleges that repeal of the seven station rule will provide greater opportunities for network collusion with respect to national and regional advertising prices. Specifically, MPAA cites to *United States* v. *American Broadcasting Co.*, No. 74–3600–RJK (C.D. Cal. filed July 21, 1976) as evidence of the network's proclivity to collude with respect to national spot and local advertising.[29] MPAA argues that the more local markets in which the networks face each other as owners and operators of local stations, the greater access they would have to immediate and detailed information about each others advertising and programming actions thereby making it easier for them to collude. In addition, MPAA observes that the networks will have a greater opportunity to raise network advertising rates as they exert greater control over an increasingly large proportion of spot audiences in all markets.

28. We note that the 1976 stipulation in *United States* v. *American Broadcasting Co.* referred to by MPAA was accompanied by a specific Justice Department declaration stating that the government did not charge the networks with collusion among themselves in any form, express, tacit or otherwise.[30] Subsequent Justice Department pre-trial pleadings in that case alleging network collusion, upon which MPAA also relies, lack any probity since these allegations have never been established in a court. Indeed, these allegations resulted not in an adjudication of collusion by the networks, but in consent decrees in which the networks and the Justice Department agreed to an entry of a final judgment "without trial or adjudication of any issue of fact or law herein, and without this final judgment constituting any evidence against or admission by any party with respect to any issue of fact or law in any action or proceeding." [31] Moreover, because network owned and operated stations already compete in the top three television markets, there is no reason to

[23] *Report and Order* at para. 52 MPAA asserts that the Commission, in adopting its co-located cross-ownership rules, rejected the notion that truly autonomous voices can emanate from the same corporation. *See Report and Order* in Docket No. 18110, 50 FCC 2d 1046 (1975), *aff'd sub nom. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978). In context, the Commission found it unrealistic to expect effectively diverse voices from commonly-owned information providers operating in the same geographic market and thus in direct competition with one another. In this proceeding, however, we found the local market to be the primary geographic market for diversity purposes. Since the duopoly and one-to-a-market rules would preclude multiple ownership of information sources in the same local market, the commonly-owned facilities at issue in this proceeding—unlike those in Docket 18110—are not direct competitors in any relevant geographic market.

[24] *Report and Order* at para. 57. In addition, the petitioner has presented no evidence controverting our previous analysis regarding the program performance of group owners. *Id.* at para. 62.

[25] We note that the evidence contained in the *Report and Order* relative to the low concentration levels of the television broadcast market remains undisputed. Specifically, the Herfindahl-Hirschman Index for the national television market is only 229 based on revenue and 115 based on audience share. These concentration figures are far below the levels at which antitrust concerns are triggered. *See United States Department of Justice Merger Guidelines*, issued June 14, 1982.

[26] *Report and Order* at para. 65, *quoting Comments of the Department of Justice* at 23.

[27] *Id.* at para. 69.

[28] The empirical evidence sumitted by MPAA is far from conclusive. The petitioner estimates that increased network ownership will decrease spot market inventories on affiliated stations by 17.4 percent. This extrapolation, however, fails to indicate the percentage of the "national" spot market that is dependent on affiliates pre-empting network programming. Moreover, its analysis fails to establish that the spot market is an effective substitute for network advertising or that other advertising substitutes are not available to provide a competitive check on network advertising rates. *See Opposition of CBS, Inc. to Petitions for Reconsideration*, App. E.

[29] *Petition for Reconsideration of Motion Picture Association of America, Inc.* at 35.

[30] *Response of American Broadcasting Companies, Inc. To Petitions for Reconsideration*, Exh. C.

[31] *United States* v. *American Broadcasting Co., Inc.*, No. 74-3600 (C.D. Cal.), *consent decree reported in* 45 FR 58441, 58442 (Sept. 3, 1980). *See also United States* v. *CBS, Inc.*, No. 74-3599-RJK (C.D. Cal.), *court entry of final judgment reported in* 45 FR 34464 (May 22, 1980); *United States* v. *National Broadcasting Co. Inc.*, 449 F. Supp. 1127 (C.D. Cal.), *aff'd mem.*, 603 F.2d 227 (9th Cir. 1978), *cert. denied sub nom. CBS, Inc.* v. *United States*, 440 U.S. 991 (1979), *consent decree reported in* 41 FR 51191, 51193 (Dec. 10, 1980).

believe that an incremental increase in information that may be derived from direct competition in other markets would suddenly trigger collusive behavior by the networks. In any event, as MPAA's citation in *United States* v. *American Broadcasting Co.* demonstrates, any such collusive behavior among the networks would be policed by the Antitrust Division.[32]

29. MPAA also alleges that repeal of the seven station rule, as applied to the networks, would impair competition in the program acquisition market and hurt independent stations through increased network control of the program syndication market. It asserts that the networks could manipulate advertising prices and warehouse quality programming to the detriment of independent stations. Petitioner's arguments presuppose the repeal of the Commission's existing financial interest and syndication rules. Because these rules remain in force, we disagree with petitioners analysis. Even if one assumes the repeal of these rules, however, MPAA's arguments have already been rejected once by the Commission.[33] Moreover, as noted in the *Report and Order*, the effect on the amount of time available to non-network programmers would be marginal at best.[34] In any event, even if owned and operated stations do choose to broadcast more in-house locally produced programming than the average affiliate, we do not believe that this is anticompetitive *per se*.[35]

[32] The Department of Justice has indicated that it would monitor and take appropriate action against such collusive behavior. *See Comments of the United States Department of Justice* at 25, n.52. With respect to the argument by MPAA that the Commission should consider the acquisition of added broadcast outlets in different geographic markets as market extention conglomerate mergers, we anticipate that the Department of Justice will also monitor such acquisitions. In addition, as MPAA acknowledges, we stated in the *Report and Order* that "the Commission will continue to scrutinize each individual acquisition to assure itself that the acquisition does not contravene any of the Commission's public policy concerns, particularly those related to diversity and competition." *Report and Order* at para. 5.

[33] *See Tentative Decision and Request for Further Comments* in BC Docket No. 82-345, 94 FCC 2d 1019 (1983), at paras. 164-174.

[34] Several petitioners have also argued that increased network ownership will subvert the prime time access rule. No persuasive evidence has been presented demonstrating that, in the absence of a national multiple ownership rule, the networks would necessarily shift to inhouse production for prime time access programming. Moreover, given the modest expansion allowed by the rules adopted herein, we do not believe that the prime time access rule will be jeopardized.

[35] See para. 28, *supra*.

3. Conclusion

30. We find that the petitioners have not demonstrated that retention of the seven station rule is necessary to effectuate the Commission's policy of promoting viewpoint diversity. Similarly, we conclude that the petitioners have not shown that the seven station rule is needed to prevent undue economic concentration. Since the petitioners have failed to controvert our conclusion that a total elimination of the seven station rule is appropriate, they cannot have demonstrated that a partial retention of the rule for selected industry participants is either necessary to achieve our policy objectives or is otherwise in the public interest.[36]

31. Moreover, petitioners' arguments are apparently couched in terms of the alleged harms which would result from either a total repeal of the seven station rule or a relaxation of the regulation to permit the networks to acquire 12 TV stations. As we explain below, however, in addition to the twelve station limit prescribed by our *Report and Order*, we are adopting on reconsideration an audience reach cap of 25 percent. Because network owned and operated stations are generally concentrated in highly populated areas and therefore already have significant population penetration,[37] this reach restriction will preclude substantial network expansion. Thus, while the reach cap is not specifically directed to any particular industry group,[38] its adoption necessarily attenuates the alleged detrimental impact of network expansion which the petitioners perceive will result from a relaxation of the rule.

32. In summary, we reaffirm the conclusions contained in our *Report and Order* that relaxation of the seven station rule should be extended to all industry participants and that elimination of the rule will have no adverse impact on viewpoint diversity or economic concentration. We now turn to a discussion of the matters in which reconsideration is warranted.

B. Revision of the Report and Order

33. After reviewing the petitions for reconsideration filed in this proceeding, we now find it appropriate to modify certain aspects of our *Report and Order*. In this regard, we now find our modification of the rule should be revised to better account for the effect that this relaxation will have on population penetration. We also find that the *Report and Order* should be revised to take cognizance of the limitations inherent in UHF broadcasting and to promote our traditional policy of facilitating minority ownership. In addition, we find that a more appropriate approach is to eliminate the automatic sunset provision contained in our previous decision.

1. Adoption of Combined Numerical and Audience Limits

34. As observed above, we continue to support the underlying conclusions contained in the *Report and Order*. In this regard, we believe that any modification to the 12 station rule must be consistent with the policy rationales found in our previous decision.

35. Balancing the benefits of increased group ownership against our traditional policy concerns with respect to diversity and economic concentration, we found in the *Report and Order* that relaxation of the seven station rule was consistent with the public interest goal of providing maximum service to the public.[39] In reaching that decision, we recognized the need to proceed cautiously in order to avoid rapid and immediate

[36] In our policies limiting multiple ownership at the local level, which are almost as old as the Commission itself, we have never discriminated among specific industry participants. To the contrary, the local duopoly and one-to-a-market rules have always been applied in an even handed manner to all types of owners. *See* 47 CFR 73.3555(a), (b). Prior to their repeal, the regional multiple ownership rules also did not selectively differentiate among station owners. *See Report and Order* in MM Docket No. 84-19, FCC 84-156 (released May 1, 1984), *appeal docketed sub nom. National Association for Better Broadcasting* v. *FCC*, No. 84-1274 (D.C. Cir. filed June 7, 1984). Similarly, since the adoption of the seven station rule more than thirty years ago, the limitations embodied in our national multiple ownership have been applied in a uniform manner to all industry participants. *See Report and Order* in Docket No. 8967, 18 FCC 288 (1953).

[37] The three networks are among the four largest group owners in terms of audience reach. The current audience reach of ABC, CBS, and NBC is 20.76 percent, 20.59 percent and 19.79 percent, respectively.

[38] Our decision to retain a relaxed national multiple ownership rule is predicated upon a concern regarding the potential impact on industry structure rather than upon a determination regarding the need to curb the dominance or alleged dominance of any specific industry participant. As a consequence, the rationale for the retention of a national ownership rule does not support the imposition of selective and more onerous restrictions on the networks. To the extent that it may be appropriate for the Commission to address such matters, they are better considered in proceedings specifically designed to do so.

[39] The Commission has long recognized that a nationwide system of broadcasting requires that some multiple ownership be permitted. The relevant issue is to determine whether the "greater good which will flow from the proposed rule offsets the disadvantages resulting from permitting individual licensees to own a larger number of stations." *See* n. 14, *supra*. In this regard, the courts have recognized the Commission's authority to promulgate multiple ownership regulations. *See United States* v. *Storer Broadcasting Co.*, 351 U.S. 192, 203 (1956).

restructuring of the broadcasting industry.[40] Reflected in our decision to adopt a transitional rule was the awareness that for many years the seven station rule served as the centerpiece in our regulatory scheme. Since its infancy, broadcasting has operated under some form of national ownership restriction. In this regard, the seven station rule has played a fundamental and vital role in creating the industrial infrastructure of broadcasting by affecting basic economic decisions relating to the development of the medium. Furthermore, our decision to retain an interim ownership limit reflected the very real concern that it would be extremely disruptive to both the industry and the public should we find it necessary, at some later date, to modify our decision and attempt to return to a stricter multiple ownership limitation. In light of these considerations, we found that the interim twelve station rule would allow us to obtain the benefits of group ownership while minimizing the risks to our traditional policy objectives.

36. On reconsideration, we have become increasingly aware of the limitations of proceeding solely with a numerical multiple ownership limit in the event that there is rapid expansion of group ownership in the wake of our relaxing of the national multiple ownership rules. As various parties have argued throughout this proceeding, a numerical approach may not give appropriate consideration to wide discrepancies in population coverage because a station in the largest market is deemed equivalent to a station in the smallest market for purposes of ownership regulation. As a consequence, relaxing the numerical cap from seven stations to twelve stations may provide an opportunity for a single group owner to increase its audience base substantially, particularly if acquisitions are made in the largest markets. A numerical cap does not affect this type of restructuring. While there is no evidence in the record that would lead us to believe that such an eventuality would necessarily have an adverse result, we now believe that the potential for this type of restructuring warrants a more cautious approach. To this extent, we now believe it advisable to adopt an additional ownership limit based on audience reach.

37. We do not believe, however, that we should replace the numerical cap with one based solely on audience reach. Standing alone an aduience reach limit may not prevent the acquisition of a tremendous number of stations in the smaller markets. In this respect, retention of a numerical limit may be appropriate, consistent with our desire not to sunset these rules, in order to reduce the possibility of disruptive restructuring in small markets where opportunities for new entrants principally exist. We also recognize that the audience reach is an untested regulatory mechanism as applied to multiple ownership regulation. Retaining the numerical limit will provide us with an opportunity to gain experience with this type of regulation without risking an entire regulatory system should we find that the audience reach approach proves unworkable.[41] Consistent with our desire to proceed cautiously, we now believe it appropriate to modify our decision contained in the *Report and Order* and adopt, in addition to a numerical cap, a limit on multiple ownership based on audience reach.

38. On reconsideration, we continue to believe that the 12 station limit reflects a reasonable balancing among a number of factors including our concern over potential adverse restructuring of the industry and our desire to capture the benefits of increased group ownership.[42] Accordingly, we retain the 12 station limit established in the *Report and Order*.[43]

39. The parties in this proceeding have presented several proposals relative to the appropriate audience reach limitation for purposes of national multiple ownership regulation.[44] In addition, the record contains two Congressional proposals which would establish an audience reach limit.[45] After reviewing the record in this proceeding, we believe that the maximum audience reach allowable for the purpose of our rules should be an amount no greater than 25 percent of the national audience as calculated as a percentage of all Arbitron ADI television households.[46]

40. We recognize, of course, that the selection of any particular reach number necessarily involves some measure of administrative subjectivity. We believe, however, that the 25 percent reach cap adopted herein is a reasonable limit given our traditional policy concerns and in light of our expectations as to the potential economic response of the industry once the current seven station limit is relaxed.[47] We also find ample support in the record for adopting a 25 percent audience reach limit.[48] In this regard, not only does the 25 percent cap offer administrative simplicity, but it also represents a more cautious approach when compared with other proposals found in the record. Moreover, an audience limit based on 25 percent of the national audience has historically

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[40] *Report and Order* at para. 110.

[41] Indeed, the concept of a multiple ownership rule based on population coverage was proposed at the time the seven station rule was adopted, but was rejected as being unworkable. *See Report and Order* in Docket No. 8967, 18 FCC 288, 292 (1953). To the extent the practicality of this approach has not been proved, we believe that "a month of experience will be worth a year of hearings." *American Airlines Inc.* v. *CAB*, 359 F.2d 624, 633 (D.C. Cir.), *cert. denied*, 385 U.S. 843 (1966). In this regard, we agree that "perfection is attained by slow degrees; it requires the hand of time." *National Association of Regulatory Utility Commissioner.* v. *FCC*, No 83–1225, slip op. at 110 (D.C. Cir. June 12, 1984), *quoting Report and Order* in CC Docket No. 78–72, 93 FCC 2d 241, 364 (1983) (Statement of Commissioner James Quello, *quoting* Voltaire).

[42] In this regard, we also note that the 12 station limit represents a cautious reflection of the growth in television stations since the seven station rule was first adopted. *See Report and Order* at para. 111. In addition, Group W, Cox and NBC all proposed retention of a twelve station limit in combination with an audience reach limit. The record also contains two Congressional proposals which support a numerical limit. *See* S. 2962, 98th Cong., 2d Sess. (1984); H.R. 6134, 98th Cong., 2d Sess. (1984).

[43] In its *Petition for Reconsideration*, Hubbard requests an exemption for broadcast facilities operating primarily as terrestrial satellite television stations from any numerical ownership limitation. Hubbard notes that because satellite facilities primarily rebroadcast the programming of parent stations rather than originate programming, they are now exempt from the restrictions concerning Grade B overlap contained in § 73.636(a)(1) [now § 73.3555(a)] of our rules. We are persuaded that these facilities should be exempt from the multiple ownership limitations as amended herein.

[44] Proposals for the basic audience reach limitation filed by the parties in this proceeding are as follows: (1) Metromedia (25 percent reach cap for VHF stations with a total reach of 35 percent combined cap for VHF and UHF stations. Also included was a 50 percent discount for independent stations); (2) Group W (27.5 percent reach cap for VHF stations with a 30 percent total reach cap for both VHF and UHF stations); (3) Taft (25 percent reach cap for VHF stations); (4) Cox (27.5 percent reach limit for VHF stations and 30 percent combined reach for VHF and UHF stations); (5) Capital Cities (27.5 percent reach cap for VHF stations and 30 percent reach cap for combined VHF and UHF stations); and (6) INTV (25 percent reach cap for VHF stations with various options).

[45] The proposed Senate bill would establish an audience reach limit of 22.5 percent for all VHF holdings and an aggregate limit of 27.5 percent for combined VHF and UHF holdings. The proposed House bill would create an audience reach cap of 25 percent for VHF owned stations and an aggregate 30 percent reach limit for combined VHF and UHF ownership. *See* S. 2963 and H.R. 6134, n.42, *supra*.

[46] In this regard we note that the Commission has previously relied on Arbitron ADI market data in administering its rules. *See, e.g., Cable Television Report and Order*, 36 FCC 2d 143 (1972), App. A (significantly viewed stations); 47 CFR § 73.658(k) note 1 (market rankings for Prime Time Access Rule).

[47] *See Office of Communications of the United Church of Christ* v. *FCC*, 707 F2d. 1413, 1437 (D.C. Cir. 1982); *NAACP* v. *FCC*, 682 F.2d 993, 1001 (D.C. Cir. 1982) (predictive judgments of market developments are within the institutional competence of the Commission).

[48] *See* n.44 and 45, *supra*.

been considered an appropriate benchmark for the purposes of national multiple ownership regulation.[49] In addition, the 25 percent limit will temper dramatic changes in the ownership structure by the largest group owners in the largest markets.[50] Alternatively, the smaller multiple owners would be given a greater opportunity to expand.[51] Accordingly, we believe it is appropriate to adopt an audience reach limit of 25 percent of the national television audience as determined by ADI market rankings.[52]

41. In addition to proposing the adoption of an audience reach limit, several petitioners and responding parties request that we give special consideration to UHF stations by manipulating the audience reach limit.[53] We now turn to a discussion of the issues pertaining to special treatment for UHF television.

(a) UHF Discount

42. In the *Report and Order*, we made no distinction between UHF and VHF television stations for purposes of the interim 12 staton rule. To the extent that the Commission has long recognized the need for a UHF/VHF distinction in its multiple ownerships rules, we agree with those petitioners who have asked us to reconsider this aspect of our *Report and Order*. Reconsideration is particularly appropriate given our heightened concern with the possibility of adverse restructuring of the industry. In this regard, we note that the UHF incentives in our multiple ownership rules have become an integral part of our regulatory framework.

43. On reconsideration, we find that while there has been demonstrable progress in the viability of UHF television, the inherent physical limitations of this medium should be reflected in our national multiple ownership rules. In this regard, we agree with the UHF Comparability Task Force which found that:

> Due to the physical nature of the UHF and VHF bands, delivery of television signals is inherently more difficult at UHF. It should be recognized that actual equality between these two services cannot be expected because the laws of physics dictate that UHF signal strength will decrease more rapidly with distance than does VHF signal strength.[54]

Because the fundamental limitation of UHF television involves its ability physically to reach viewers, we believe the audience reach limit adopted herein is the more appropriate vehicle for expressing or continued concern with this medium. Indeed, each of the petitioners addressing this issue requested that any UHF distinction be reflected by increasing the audience reach limit.[55]

44. While we agree with the petitioners' assessment as to the need for a UHF incentive within the context of the audience reach limit, we do not believe that the incentive should be structured so as to merely increase the reach cap. Such an approach would not accurately represent the physical handicaps confronting UHF television. Consistent with the diversity objectives expressed in our ownership rules, we believe that a more appropriate indicator of the reach handicap of UHF stations is one that measures the actual coverage limitation inherent in the UHF signal. Therefore, with respect to the audience reach limit adopted herein, we believe that owners of UHF stations should be attributed with only 50 percent of an ADI market's theoretical audience reach to account for this disparity. For example, the theoretical ADI audience reach of the New York market comprises 7.72 percent of all television households. Under the system adopted today, the owner of a UHF station in the New York market would be attributed with an audience reach of only 50 percent of this amount which equals 3.86 percentage points.[56] We find that the discount system adopted herein properly reflects the Commission's historical concern with UHF television. Furthermore, the discount approach provides a measure of the actual voice handicap and is therefore consistent with our traditional diversity objectives.

(b) Minority Incentives

45. In the *Report and Order*, we observed that the national multiple ownership rules were not primarily intended to function as a vehicle for promoting minority ownership in

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[49] *See* S. 1333, 80th Cong. 1st Sess. (1947); *To Amend the Communications Act of 1934: Hearings Before the Subcomm. on Interstate and Foreign Commerce on S. 1333*, 80th Cong., 1st Sess. (1947); S. 2658, 84th, Cong., 2d Sess. (1956); *Network Monopoly: A Report for the Comm. on Interstate and Foreign Commerce*, 84th Cong., 2d Sess. (1956); *But see Network Broadcasting: Report of the Comm. on Interstate and Foreign Commerce*, 85th Cong., 2d Sess. (1958) (Barrow Report).

[50] In this regard, the 10 largest group owners in terms of Arbitron ADI audience reach are as follows: Metromedia (23.89 percent); ABC (20.76 percent); CBS (20.50 percent); NBC (19.79 percent); WOMETCO/KKR (16.9 percent); Tribune (14.51 percent); RKO (13.5 percent); Chris Craft (11.1 percent); Westinghouse (10.12 percent); and Cox (9.68 percent). *See generally Television and Radio Age*, October 1, 1984 at 83–86.

[51] By way of example, Taft Broadcasting Corporation currently owns seven television stations and cannot expand under the current seven station rule. Pursuant to the general rules adopted herein, Taft would be able to acquire five additional television stations, provided that the stations were purchased in markets whose combined audience did not exceed the 25 percent limit established herein. We note, however, that the audience reach calculations for Taft would necessarily involve consideration of the UHF discount. *See* n.56, *infra*.

[52] The audience reach of entities having an ownership interest in a commercial television station will be calculated by attributing to the owner the percentage of total ADI households found in each ADI market in which the owner has a commercial television station. Initial determinations as to a group owner's total audience reach will be calculated on the effective date of this order by utilizing the latest Arbitron Market Index Guide. The total audience reach of each group owner will be recalculated upon each future acquisition. The Commission will not approve any acquisition if at the time that we consider the acquisition the owner already exceeds the limits established herein or will, as a result of the acquisition, exceed the audience reach limit. We will not, however, require divestiture once an acquisition has been approved. For example, a group owner that currently reaches 25 percent of the national audience may exceed this limit at some future time because of population shifts within the ADI markets. While such an occurrence would prevent the group owner from acquiring new stations, it would not be required to divest any of its stations in order to comply with the 25 percent limit. Alternatively, group owners in markets with declining populations may, at some future time, be in a position to acquire additional television stations while remaining at or below the 25 percent audience reach limit.

We recognize that the Arbitron ADI system does not at this time provide television market data for all geographic areas, including Alaska, Hawaii, Puerto Rico and other areas in the United States. An applicant for a station in an area for which Arbitron data are not available will make a showing as to audience reach of its market. The Commission shall then make a determination as to the applicant's audience reach consistent with the policy objectives contained in this *Memorandum Opinion and Order*.

[53] *See* n.44, *supra*.

[54] *Comparability for UHF Television: Final Report*, September 1980 at 2. *See Report and Order* in Gen. Docket No. 78–391, 90 FCC 2d 1121, 1124 (1982).

[55] None of the petitions for reconsideration request that a UHF/VHF distinction be made with respect to the numerical cap. *See* n.42 and 44, *supra*. To the extent that the original UHF exemption to the five station rule was granted to promote the development of a new medium, we believe that continuation of the dichotomy with respect to the 12 station cap is no longer appropriate. In the context of this proceeding, retention of the UHF/VHF distinction with respect to the audience reach limit is primarily a reflection of the physical reach limitations of UHF service as compared with VHF television. We also note that the discount system will reduce the possibility of erosion of the tremendous progress made by UHF television to date.

[56] Using the example cited above (*see* n.51, *supra*), Taft currently owns two UHF stations whose audience reach equals 4.72 percent of the national audience. Under the discount approach, only 50 percent of this amount, 2.36 percentage points, would be attributed to Taft for the purpose of calculating its total audience reach limit. As a result, Taft's current portfolio would amount to 6.71 percent of the national audience as opposed to 9.07 percent in the absence of the discount. Applying the discount to its present station portfolio would allow Taft to increase its combined audience reach by at least 18.29 percentage points if it acquires all VHF stations. We also note that the UHF discount applies to future acquisitions. As a consequence, if Taft chooses to acquire additional UHF stations, its growth potential is correspondingly increased.

broadcasting. In this regard, we noted that the Commission has instituted various policies such as tax certificates, distress sale benefits and lottery preferences to promote minority ownership in communications.[57] We continue to believe that these policies, as opposed to our multiple ownership rules, should serve as the primary mechanisms to promote minority ownership in television and radio broadcasting. We recognize, however, that our national multiple ownership rules may, in some circumstances, play a role in fostering minority ownership. Thus, while it would be inappropriate to retain mutiple ownership regulations for the sole purpose of promoting minority ownership, we now believe that a minority incentive should be included in the rules adopted by our action today. Accordingly, we are adopting rules today which permit group owners of television and radio stations to utilize a maximum numerical cap of 14 stations provided that at least two of the stations in which they hold cognizable interests are minority controlled. Group owners having a cognizable interest in at least one minority controlled television or radio station may utilize a maximum numerical cap of 13 stations. Extending this policy to the audience reach limit for television, we believe that a group owner having cognizable interests in minority controlled television stations should be allowed to reach a maximum of 30 percent of the national audience, provided that at least five percent of the aggregate reach of its stations is contributed by minority controlled stations.[58]

46. A question arises as to the proper definition of a minority owned station for the purpose of our multiple ownership rules. In this regard, we note that the Commission has adopted different standards of minority control depending on the mechanism used to foster its minority policies.[59] In the context of the multiple ownership policies, we believe that a greater than 50 percent minority ownership interest is an appropriate and meaningful standard for permitting increases to the rules adopted herein.[60]

2. Radio

47. On reconsideration, we continue to believe that our decision in the *Report and Order* as applied to radio was correct.[61] Only NBMC requests review of our decision, arguing that the Commission should eliminate the distinction between AM and FM and set a numerical limit at 14 stations per owner. Referencing its reply comments, petitioner claims that the AM/FM distinction "probably" encourages co-ownership of AM and FM station in the same local market. NBMC argues further that eliminating the AM/FM distinction will increase local diversity by eliminating incentives for creating local combinations.[62] The petitioner presents no evidence to support its contention that the distinction between AM and FM in our ownership rules actually encourages local co-ownership of radio stations. Moreover, we note that it is our local rules that play the most significant role in permitting AM/FM combinations. In this regard, we do not deem it advisable to reevaluate our previous decisions with respect to our local rules on the record now before us.[63] We recognize that growth of FM service has made it a viable competitor in the marketplace. We do not believe it appropriate at this time, however, to eliminate the AM/FM distinction as contained in our national multiple ownership rules, particularly in light of our recent decision with respect to new FM allocations.[64] Finally, we note that limiting the total number of AM and FM radio stations that may be owned by a single entity to 14 amounts to a de facto return to the seven station rule with respect to aggregate number of radio stations that may be owned by a single entity. Even assuming, *arguendo*, that elimination of the AM/FM distinction would provide radio broadcasters with greater choice in their broadcast acquisitions, there is no evidence in the record to support a return to a maximum 14 station limit.[65] In this regard, we believe a more appropriate approach would be to retain the regulatory distinction between AM and FM at this time.[66]

48. NBMC has also requested that we eliminate the sunset provision as applied to radio. Consistent with our discussion, *infra*, we believe that the 12 station limit for radio should not terminate automatically in six years.

3. Elimination of Automatic Sunset

49. The *Report and Order*, established a six year transition period for the 12 station numerical limit for both radio and television. On reconsideration, we find it inadvisable to terminate the ownership regulations adopted herein automatically at the end of six years. We continue to believe that it is appropriate to proceed cautiously in relaxing rules that affect such a vital aspect of the broadcasting industry. Virtually all parties on reconsideration agreed that the automatic termination of the multiple ownership rule is not an integral part of relaxing the seven station rule. We agree and find that an automatic sunset of our ownership rules is unnecessary to achieve our policy objectives.

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[57] *See Policy Statement and Notice of Proposed Rulemaking* in Gen. Docket No. 82-797, 92 FCC 2d 849 (1982); *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 (1979); *Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications Strategies for Advancing Minority Ownership in Telecommunications* (May 1982).

[58] We believe that the five percentage point increase is an appropriate incentive to encourage minority ownership in television broadcasting and note that it has been suggested elsewhere as well. *See* H.R. 6134, 98th Cong., 2d Sess. (1984). *See also* S. 2962, 98th Cong., 2d Sess. (1984). It should be noted that the minority incentive adopted herein will be applied to a group owner's aggregate audience reach, the calculation of which would be already include the effects of any UHF discounts.

[59] *See Policy Statment and Notice of Proposed Rulemaking* in Gen. Docket 82-792, n.57, *supra*, at para. 16.

[60] The Commission has instructed the staff to prepare for its early consideration a *Notice of Proposed Rule Making* which examines the interaction between the minority incentives adopted by this *Order* and the broadcast ownership attribution rules. In particular, under the single majority shareholder rule, a 49 percent stockholder of a broadcast license is not attributed with that interest under our multiple ownership rules if a majority of the licensee's stock is held by a single majority shareholder. *See* 47 CFR 73.3555 NOTE 2(b). The proposed *Notice of Proposed Rule Making* will explore this aspect of the attribution rule in light of the minority incentive adopted herein.

[61] We note, of course, that the *Order* which stayed the effective date of the *Report and Order* did not apply to radio broadcasting. *See* n.5, *supra*.

[62] In this regard, we note that if a non-licensee files a mutually exclusive application for either the AM or FM station, it would receive an advantage for diversification under the Commission's standard comparative criteria. *See Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965).

[63] *See Memorandum Opinion and Order* in RM 3401, FCC 82-113, 51 R.R. 2d 449 (1982); *Second Report and Order*, 50 FCC 2d 1046 (1975).

[64] *See Report and Order* in BC Docket 80-90, 53 R.R. 2d 1550 (1983).

[65] *See Report and Order* at para. 34.

[66] In this regard we note that there is now before the Commission a Petition for Rule Making (RM-3567), filed by Hyman Goldin on October 22, 1979. To the extent that petitioner requests us to examine the multiple ownership rules as applied to radio broadcasting, his request has already been accomodated with the subsequent adoption of the *Notice* in the instant proceeding. The petitioner, however, also urges that Commission amend its rules by restricting combined AM/FM ownership to a maximum of 7 stations. As noted above, the record in this proceeding supports a relaxation of the multiple ownership rules for radio rather than the imposition of more restrictive regulations. Therefore, to the extent the petitioner urges us to adopt a specific numerical cap for radio broadcasting, we believe that the Petition for Rule Making should be denied.

Conclusion

50. On reconsideration, we affirm the conclusion contained in the *Report and Order* that, as a policy matter, the total elimination of a presumptive national ownership rule would benefit the public interest. We are convinced that the repeal of the seven station rule would not contravene our traditional policy objectives of promoting diversity and preventing undue economic concentration.

51. While we continue to recognize the importance of enhancing diversity, we reject the notion that we must consider diversity to the exclusion of other important considerations in assessing the need to retain a national multiple ownership rule. Rather, in determining the approach which best serves the public interest, our responsibility is to balance considerations of diversity with other important regulatory goals.

52. While repeal of the seven station rule is warranted as a matter of policy, we recognize that the rule has been an integral part of our regulatory framework for many years. In this regard, our objective is to permit a reasonable amount of expansion of group ownership immediately but not to create the danger of an abrupt and disruptive restructure of the national broadcasting industry. To achieve this objective, we reaffirm our decision to relax the numerical cap to permit the ownership of 12 AM, 12 FM and 12 TV stations by single person and in addition establish an audience reach cap which would limit the aggregate ownership interests in TV stations to those which penetrate a maximum of 25 percent of the national audience as measured by Arbitron ADI market rankings. Moreover, due to the physical limitations of UHF signals, we will attribute owners of UHF stations with only 50 percent of their theoretical ADI reach. Broadcast facilities operating primarily as terrestrial satellite television stations will be exempt from both the numerical and audience reach limits adopted herein.

53. While our multiple ownership rules are not the primary vehicle by which we effectuate our policy to promote minority participation in the broadcast industry, we believe it appropriate to take cognizance of this policy by adopting rules which encourage minority ownership. Accordingly, we will increase to 14 the numerical station ownership limitation for persons acquiring cognizable interests in such minority owned and controlled broadcast stations. With respect to the audience reach limit for television, a station owner will be allowed to reach a maximum of 30 percent of the national audience, provided that at least 5 percent of the aggregate reach of its stations is contributed by minority controlled stations. For the purposes of the rules adopted herein, minority control shall be defined as a station having greater than a 50 percent minority ownership. Finally, on reconsideration, we have decided that it is inappropriate for us to eliminate the national multiple ownership rules automatically after a fixed six year period.

Implementation

54. Because the Congressional moratorium does not apply to the radio aspect of our *Report and Order*, the rules adopted herein as they affect radio broadcasting will become effective 30 days after publication of this *Memorandum Opinion and Order* in the **Federal Register**. As applied to television the rules adopted herein shall become effective April 2, 1985.[67]

Regulatory Flexibility Analysis

I. Need and Purpose of the Rule

55. While we continue to believe that, as a policy matter, there is no need for national multiple ownership regulations in order to promote our traditional policy objectives, we have retained the above stated ownership rules in order to avoid potential adverse restructuring of the industry.[68] In this regard, our objective is to permit reasonable expansion so as to capture the benefits of group ownership while avoiding the possibility of potential disruptive restructuring of the national broadcast industry.

II. Summary of Issues Raised By Public Comment in Response to the Initial Regulatory Flexibility Analysis

56. As observed in the regulatory flexibility analysis for the *Report and Order*, a relaxation of the seven station rule would have no adverse effect on small business. Moreover, the combined numerical and audience reach caps adopted for television will minimize the potential for harmful restructuring that could possibly have accompanied a immediate repeal of the rule. In addition, the minority incentives adopted herein will assist small minority businesses. The UHF discount may also provide greater investment into UHF stations that often are smaller enterprises.

III. Significant Alternatives Considered and Rejected

57. Issues concerning the various policy options were addressed sufficiently in the Regulatory Flexibility Analysis for the *Report and Order*. We believe that the more cautious approach adopted herein will reduce the potential for adverse restructuring of broadcast industry. Similarly, the cautious approach adopted herein will also reduce the potential for adverse effects with respect to small businesses.

58. Accordingly, it is ordered, That the petitions for reconsideration filed in this proceeding are granted to the extent indicated herein, and in all other respects, pects, are denied.

59. It is further ordered, That Part 73 of the Commission's Rules and Regulations is amended, as set forth in Appendix A. The rules adopted herein for radio broadcasting shall become effective 30 days after publication of this *Memorandum Opinion and Order* in the **Federal Register**. The rules adopted herein for television broadcasting shall become effective April 2, 1985.

60. It is further ordered, That the Petition for Rule Making filed by Hyman Goldin (RM-3567) is hereby denied.

61. It is further ordered, That FCC Forms 301, 314 and 315 will be amended by separate Commission action in accordance with the provisions of this *Memorandum Opinion and Order*.

62. It is further ordered, That the Secretary shall cause a copy of this *Memorandum Opinion and Order* to be printed in the FCC Reports.

63. Authority for the actions taken herein is contained in sections 4 (i) and (j), 301, 303, 308, 309 and 405 of the Communications Act of 1934, as amended.

64. For further information concerning this proceeding, contact David L. Donovan or Laurel R. Bergold, Mass Media Bureau, (202) 632-7792.

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

Federal Communications Commission.
William J. Tricarico,
Secretary.

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[67] The Congressional moratorium prevented implementation of the television aspects of the *Report and Order* prior to April 1, 1985 or 60 days after reconsideration, whichever is later. The date of the adoption of this *Memorandum Opinion and Order* is December 19, 1984, thereby making April 2, 1985 the later of the two dates. In addition, section 553(d) of the Administrative Procedure Act requires publication of a substantive rule to be not less than 30 days before its effective date. 5 U.S.C. 553(d) (1982). The April 2, 1985 implementation date we adopt herein is in conformance with the procedural requirements of this statute.

[68] We note that a final Regulatory Flexibility Analysis was inadvertently omitted from the *Report and Order*. A final Regulatory Flexibility Analysis for the *Report and Order* appears in Appendix B.

PART 73—[AMENDED]

Appendix A

Part 73 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. In Subpart H, § 73.3555, paragraph (d) is revised to read as follows:

§ 73.5555 [Amended]

(d)(1) No license for a commercial AM, FM or TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in, either:

(i) more than fourteen (14) stations in the same service, or

(ii) more than twelve (12) stations in the same service which are not minority-controlled.

(2) No license for a commercial TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in, either:

(i) TV stations which have an aggregate national audience reach exceeding thirty (30) percent, or

(ii) TV stations which have an aggregate national audience reach exceeding twenty-five (25) percent and which are not minority-controlled.

(3) For purposes of paragraph (d) of this section:

(i) "national audience reach" means the total number of television households in the Arbitron Area of Dominant Influence (ADI) markets in which the relevant stations are located divided by the total national television households as measured by ADI data at the time of a grant, transfer or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their ADI market. Where the relevant application forms require a showing with respect to audience reach and the application relates to an area where Arbitron ADI market data are unavailable, then the applicant shall make a showing as to the number of television households in its market. Upon such a showing, the Commission shall make a determination as to the appropriate audience reach to be attributed to the applicant.

(ii) "TV broadcast station" or "TV station" exclude stations which are primarily satellite operations.

(iii) "minority-controlled" means more than 50 percent owned by one or more members of a minority group.

(iv) "minority" means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander.

2. In Subpart H, § 73.4285 is removed.

Appendix B.—Regulatory Flexibility Analysis for the Report and Order Adopted July 26, 1984

I. Need for and Purpose of Rule

1. The purpose of the Commission's national multiple ownership limitations has been to promote diversity of program service and prevent undue economic concentration in broadcasting. After reviewing an extensive record in this proceeding, we conclude that these regulatory constraints are no longer necessary to accomplish these goals. We find that the appropriate geographic market for diversity analysis is primarily local and our local multiple ownership rules, which are unaffected by the *Report and Order*, are the rules which are designed to promote diversity in that geographic market. We also find that the relevant product market, the information services market, has undergone expotential growth since the adoption of the seven station rule; it includes both a large number and broad variety of mass communications sources. Thus, even assuming that the information services market is a national one, it is sufficiently diverse so as to be unaffected by the transitional relaxation and subsequent elimination of the seven station rule prescribed by the *Report and Order*. Moreover, we note that there ae diversity benefits to group ownership through the production of quality public affairs programing and new programing. Furthermore, the record establishes that there is no danger of excessive economic concentration in the relevant competitive markets and that there are potential efficiency gains from repeal of the rule. We also find that repeal of the rule will adversely affect minorities and that there are other more appropriate vehicles for achieving the Commission's objectives with respect to minority ownership.

2. We conclude that the seven station rule is no longer necessary to promote our traditional policy concerns of viewpoint diversity and economic competition. We note, however, that if the rule were repealed immediately and in its entirety a significant restructuring of the broadcast industry may occur. While the record contains no evidence of potential harm from the ownership changes that would be made possible by immediate repeal of the rule, out of an abundance of caution, we will establish a transitional limitation for a period of six years during which multiple station ownership in each broadcast service will be capped at a numerical limit.

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

3. In the *Notice* we stated that modifying the seven station rule would have a direct and immediate impact upon only a limited number of entities, because few station owners are at or near the "seven station" limits. Nothing in the record causes us to alter this observation and consequently we continue to believe that the immediate and direct effect of a relaxation of the seven station rule would not be significant with respect to the majority of broadcasters.

4. We also stated in our *Initial Regulatory Flexibility Analysis* that over a period of time, those entities that have not yet reached the seven station limit could be expected to increase their station portfolios. As a result, we noted that a relaxation of the seven station rule may facilitate the ability of small businesses to obtain new capital from investors desiring equity participation in broadcasting. The evidence contained in the record in this proceeding supports this observation.

5. In our initial analysis, we observed that relaxation of the seven station rule may allow small entities to enter into program production and related areas through the realization of efficiencies found in larger enterprises. Evidence contained in the record supports our analysis that relaxing the seven station rule may provide these entities with a sufficient audience base where they may be able to commence program production by themselves or in conjunction with other group owners. With respect to increased efficiencies, the record contains evidence supporting the proposition that group ownership can foster greater efficiencies with respect to news gathering, editorializing and public affairs programming, and the development of independent programming by regional or ad hoc networks. We note, however, that while these and other efficiencies are

probable, it is difficult to assess how significant they might be in light of the constraints imposed by the current regulatory ceilings. In this regard, the ability to utilize previsously untapped effeciencies of group ownership may be reflected in station prices. If this were the case, station prices could rise because efficiencies would increase their value to group buyers. These is no hard evidence in the record, however, that station prices are likely to rise significantly. The theory that greater efficiencies of size may exist at some level above seven stations is consistent with the position of those commenters who argued that larger group owners could more easily form ad hoc networks.

6. In reaching our decision, we also analyzed the potential anticompetitive effects that could possibly accompany a modification of the seven station rule. Regarding the possibiltity of a competitive harm, we adopt the conclusion of the Department of Justice, the agency entrusted with the enforcement of the antitrust laws, that elimination of the seven station rule will have little adverse competitive effects in any market, and that license transfers involve on significant competitive risk simply because they result in common ownership of more than seven stations in a broadcast service. Specifically, we note that elimination of the rule will not adversely affect local spot advertisers, national advertisers or independent program producers.

7. Our initial analysis noted the potential impact on other small entities such as station brokers, those involved in financing broadcast stations and suppliers to broadcasters. Nothing in the record controverts our initial analysis that the turnover of stations and new station start-ups may create new or additional business for these entities. On the contrary, there is evidence in the record indicating that relaxing the rule of sevens may lead to increased equity investment in broadcasting.

8. In summary, the evidence contained in the record supports the conclusion that the rule of sevens should, after a transitional period, be completely eliminated. Specifically, there is no persuasive evidence to indicate that small businesses, as a class, would be affected adversely by a transitional relaxation and subsequent elimination of the seven station rule. On the contrary there is every reason to believe that the modification of the seven station rule adopted by the *Report and Order* would have a positive effect on small business organizations.

III. Significant Alternatives Considered and Rejected

9. The *Notice* in this proceeding proposed a consideration of a wide variety of regulatory options ranging from complete elimination of all national multiple ownership regulations to relaxing the seven station limit. Evidence in the record supports a complete elimination of the national multiple owership rules for both radio and television. To the extent that a repeal of all national multiple ownership rules would have no adverse competitive impacts, we believe that relaxing the multiple ownership rules at some level short of total repeal will likewise have no adverse competitive consequences. In additon, there is no persuasive evidence in the record justifying differential treatment of the networks for the purpose of national multiple ownership restrictions. In this regard, the record does not demonstrate that small business will be uniquely disadvantaged by either a total repeal of the national multiple ownership rules or by a relaxing of the seven station rule.

10. As observed above, we have retained an interim 12 station ownership limit. In this regard, any potential adverse affect on small businesses that could possibly accompany an immediate repeal of all multiple ownership rules will be minimized. We note, however, that the record contains no persuasive evidence of any potential harm to small businesses from complete repeal of the rule.[1]

Separate Statement of Commissioner Mimi Wayforth Dawson Concurring in Part

In Re: Amendment of Section 73.3555 of the Commission's Rules (Seven-Station Rule)

In my dissent to the Commission's original decision in this proceeding, I proposed a relatively simple plan for replacing the Commission's seven-station rule with a rule based on a percentage cap of the national television audience. *Amendment of § 73.3555 of the Commission's Rules,* —— F.C.C. 2d —— (1984) (Dawson, C., dissenting). I believed that a percentage cap was a sound approach which would have withstood both legal and legislative muster.

The instant decision adopts such a percentage cap, which I support enthusiastically. However, this decision also includes aspects which I support much less enthusiastically. For example, it not only retains a 12-station cap for radio but also deletes the six-year sunset for the radio cap adopted in the original order. Likewise, this decision retains a 12-station limitation on television ownership even though I continue to believe that a numerical cap handicaps virtually all non-network group owners in their ability to compete with the established networks since those group owners will almost certainly reach the numerical cap long before they reach the percentage cap.

Perhaps most unfortunately, this decision adopts separate caps for minority ownership, and I can only concur in the adoption of these provisions. I do not believe that the Commission's national ownership rules are the proper vehicle to provide incentives for minority ownership. If the Commission's concern is the concentration on a nationwide basis of too much ownership in any one entity's hands, I do not see how that concentration is in any way ameliorated by the race of that entity's owners.

Separate Statement of Commissioner Dennis R. Patrick Dissenting in Part

In re: Amendment of Section 73.3555 of Commission's Rules relating to Multiple Ownership of AM, FM and Television Broadcast Stations.

For the most part, I support this item. On reconsideration, the overwhelming weight of the comments suggested that the Commission adopt an even more cautious approach to relaxation of our multiple ownership rules than that in our initial decision. The Commission has, in my opinion, made an appropriate adjustment to reflect those concerns.

I dissent in part, however, to that portion of the decision that sets two different national ownership rules based on race, for the reasons set forth below.

I am a strong supporter of our efforts to foster minority ownership. I believe that our comparative hearing process, in which we use criteria recognizing the important contribution which minority ownership and integration into management can make to diversity in the marketplace of ideas, is a positive model in this regard.

I am unsure, however, that national ownership rules are the proper vehicle to attempt to structure incentives for minority ownership. Our national ownership rules are concerned with ensuring that no single individual controls access to too large a segment of the American public. Surely this is not an issue that turns on race. If the public interest is threatened by concentrating ownership of 14 stations in a single owner, how is that threat obviated by the race of that owner?

Our minority ownership policies, on the other hand, are designed to maximize diversity among broadcast licensees—but subject to the same national ceiling. I believe, therefore, that we should set a single national ownership ceiling and then work, within the constraints of that limit, to foster minority ownership of broadcast stations.

I note, in this regard, that the Commission concluded in our initial decision in this matter that the national multiple ownership rules were an improper vehicle to promote minority ownership. I find little in the majority's decision or in the record to support a reversal of this position.

Even assuming that our national ownership rules should be used to facilitate minority

[1] The above Regulatory Flexibility Analysis applies to the *Report and Order* in this proceeding which was adopted by the Commission on July 26, 1984. The Regulatory Flexibility Analysis for the *Memorandum Opinion and Order* appears in paragraphs 55 to 57 of the main text.

ownership, however, I must still dissent in part to the majority's plan. I believe that this Commission, like any other government body, should use racial classifications in granting or denying civil rights only in a manner which bears a direct and necessary relationship to the interest at issue—here, promoting diversity of viewpoints. Under the majority's plan, the nexus between the use of racial classifications and the promotion of diversity interests is too tenuous.

Under the majority's scheme, the right to purchase broadcast stations over the established ceiling turns upon the race of the proposed owners alone. No further showing is required with respect to how these new owners may contribute to diversity. No concern is given as to whether the 51% minority owners will exert any influence on the station's programming or will have any control at all.

I believe that this Commission would be better advised to proceed on a case-by-case waiver basis. For example, the Commission might grant waivers of its 12 station/25% reach ownership ceiling, to maximum of a 14 station/30% reach limit, upon a showing by an applicant that the acquisition would contribute to diversity. In evaluating such applications the Commission could evaluate numerous factors in addition to race, just as we do in the comparative process—including such factors as integration of the minority owners into management or their participation in other influential roles (e.g., sitting on the board of directors), the filling of other key managerial positions with minority employees, proposed programming, involvement in local minority organizations, etc. In addition, we could focus on the amount of minority ownership, etc. In addition, we could focus on the amount of minority ownership, thereby avoiding a rigid requirement of 51% which may well render the majority's plan ineffectual in practice.

Such a process would allow the Commission to focus on whether our compelling interest in promoting diversity of viewpoints is furthered. And it would avoid the Commission's granting of preferences based solely on race without regard to whether diversity will be furthered.

Under its present form, however, I cannot vote for the Commission's plan. Accordingly, I dissent in part.

[FR Doc. 85-2751 Filed 1-31-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-741; RM-3727; RM-3876; FCC 84-529]

Rules To Authorize the Transmission of Teletext by TV Stations; Amendment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein addresses sixteen petitions for reconsideration filed with respect to the Commission's *Report and Order* in BC Docket 81-741. That *Report and Order* authorized television stations to transmit teletext signals and established regulations for teletext services and technical operations. Petitioners collectively raise issues concerning six aspects of this authorization: (1) the definition of teletext, (2) authority for public broadcasters to operate remunerative services on the text channels of the line 21 caption system, (3) public service obligation associated with sections 312(a)(7) and 315 of the Communications Act, as amended, (4) regulation of private and common carrier teletext services, (5) cable retransmission of teletext, and (6) the date the rules were made effective. The request to allow public broadcasters to operate remunerative services on the text channels of the line 21 caption system is granted. The Commission granted the NAB's request to preempt state regulation of common carrier teletext service insofar as it affects entry in a separate decision BC Docket 82-536 (*Memorandum Opinion and Order*, 49 FR 19659, adopted April 26, 1984). The Commission also deferred action on the limited issue of whether to require cable systems to carry teletext that is related to the main program service and indicated that it would decide this question at the time it addressed a similar issue in the TV aural subcarrier proceeding (Docket 21323). Reconsideration is denied with respect to all other issues as petitioners fail to demonstrate any other error or omission in the *Report and Order* so material as to warrant alteration of the Commission's action in this matter.

EFFECTIVE DATE: March 4, 1985.

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

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Memorandum Opinion and Order

In the matter of Amendment of Parts 73 of the Commission's Rules to Authorize the Transmission of Teletext by TV Stations; BC Docket No. 81-741, RM-3727, RM-3876.

Adopted: November 8, 1984.

Released: January 24, 1985.

By the Commission: Commissioner Rivera dissenting in part and issuing a statement at a later date.

1. The Commission has before it the "Petitions for Reconsideration" filed by sixteen parties in response to its action authorizing broadcast television stations to operate teletext services, *Report and Order*, 48 FR 27054 (published June 13, 1983).[1] The petitioners seek reconsideration of our policy decisions in the following six areas: (1) The definition of teletext, (2) authority for public broadcasters to operate remunerative services on the text channels of the line 21 caption system, (3) public service obligations associated with section 312(a)(7) and 315 of the Communications Act, as amended, (4) regulation of private and common carrier teletext services,[2] (5) cable retransmission of broadcast teletext, and (6) the date the rules were made effective.[3] These issues will be treated in turn.

Teletext Definition

2. Four petitioners request that the definition of teletext be expanded to permit transmission of material not intended for, or related to, visual display purposes.[4] The petitioners believe that there is no reason to delay authorization of non-display data transmissions. They state that the Commission should move forward in this proceeding to allow the widest possible use of teletext technology. Geller, *et al.* (Geller) states that the Commission is repeating the case of FM subcarriers where for years it "unnecessarily restricted subcarrier transmission to 'broadcast-type' transmissions." The National Association of Broadcasters (NAB) argues that the current definition poses another unnecessary obstacle to the full development of teletext. It states that the market should decide whether other services are a proper use of this technology. The Public Broadcasting Service (PBS) does not agree with the Commission's view that teletext is generally understood to be only a visual display medium. The submissions of other parties that addressed this issue,

[1] Eleven parties also submitted responses either supporting or opposing the requests for reconsideration, and five parties filed replies to the responses. A complete list of the parties filing petitions, responses/oppositions, and replies on any aspect of teletext reconsideration and lists of the parties participating on each of the major issues requested for reconsideration are provided in Appendix A.

[2] The Commission decided one aspect of the common carrier services issue, that of whether to preempt state regulation of teletext common carrier services, in a separate action. See para. 22, *infra*.

[3] Geller, *et al.* also requested that the Commission consider requiring teletext capability in new color television receivers. As this request is beyond the scope of this proceeding and the action in the *Report and Order*, it is being denied without discussion.

[4] Examples of non-display uses include transmission of video games, raw data (consumer or commercial), and computer software.

including those filing responses, offer similar arguments for expanding the definition.

3. The petitioners' arguments and statements for expanding the definition of teletext are essentially the same as those that the Commission considered and rejected in the *Report and Order*.[5] In establishing the definition for teletext, the Commission sought to provide authority for the widest possible range of applications and services that is within the generally understood concept of teletext as a visual display medium. Thus, teletext was defined as a data system for the transmission of textual and graphic information intended for display on viewing screens. This definition was expanded slightly to allow transmission of data signals that are useful to widen and enhance the usability of the teletext information in a non-display context. We continue to believe that petitioners' requests are beyond the scope of this proceeding and that there is no basis for changing the definition of teletext adopted in the *Report and Order*. Nevertheless, the Commission wishes to reiterate that in limiting teletext to essentially display purposes, it did not take a position on a more generalized authority that would permit other kinds of data signals on the vertical blanking interval (VBI).[6]

Remunerative Services by Public Broadcast Stations

4. In its petition, the University of Wisconsin System (UWS), the licensee of noncommercial station WHA-TV, requests that the Commission extend to public broadcasters the authority to operate "for profit" or remunerative services on the two text channels of the line 21 caption system.[7] UWS currently provides a full-time news, weather and public service announcement service for the hearing impaired on one channel and a farm/agribusiness service on the other. In support of its request, UWS submits that sponsorship income would help continue these services and facilitate their eventual transfer to teletext delivery.

5. PBS and the National Captioning Institute (NCI) indicate their support for the basic concept of UWS's proposal, which is that public broadcasters be allowed to operate remunerative services on the two line 21 system text channels. However, they disagree with UWS's suggestion that this policy be implemented through a change in the text of § 73.682 of the Rules.[8] PBS offers the opinion that commercial services can be transmitted on the line 21 system by noncommercial stations under the existing rules.[9] PBS is concerned that the changes suggested by UWS would allow teletext on line 21. NCI shares this concern and emphasizes the view that the Commission should continue to preclude teletext from line 21. It suggests that the relief requested by UWS be provided through an interpretation of the rules that would simply state that § 73.621(e) does not apply to use of line 21. In its reply, UWS acknowledges the statements of NCI and PBS and withdraws its petition to the extent that it sought to extend teletext authorization to line 21. It lets the petition stand in seeking clarification of the applicability of § 73.621(e) to use of line 21 text facilities.

6. The Commission agrees with the petitioners that it would serve the public interest to allow public broadcasters to operate remunerative services on the text channels of the line 21 caption system. Such authority for public broadcasters would be consistent with the Commission's policy allowing them to use their teletext facilities on a remunerative basis as an alternative source of financing and would not be expected to inhibit or interfere with provision of non-commercial caption service.

7. The Commission does not wish to lend ambiguity to the rules in the sense that it might be providing a general authorization to use line 21 for teletext. Therefore it will not implement the change to § 73.682 that was suggested by UWS in its original filing. Instead, the Commission is adding a new paragraph (g) to § 73.621 to explicitly indicate authority to transmit non-program related signals on line 21 for remunerative activities. This new paragraph (g) is set forth in Appendix B.

Teletext as Ancillary Service—Sections 312(a)(7) and 315 of the Communications Act

8. In the *Report and Order*, The Commission concluded that, as a matter of law, sections 312(a)(7) and 315 of the Act need not be applied to teletext. It further stated that because of teletext's unique characteristics as a print medium and an ancillary service of broadcasting, it believed application of these statutory provisions is both unnecessary and unwise as a matter of policy.

9. Two parties, *MAP and Geller* challenge the Commission's decision not to apply fairness and political broadcasting regulations to teletext services. MAP argues three points. It first charges that the Commission violated section 553(c) of the Administrative Procedures Act (APA), 5 U.S.C. 553(c), in that it failed to mention or ask comment on the applicability of the equal opportunity, reasonable access, lowest unit rate charge and fairness doctrine requirements to teletext in the *Notice*. MAP then argues that the Commission incorrectly held that the law does not require the application of fairness/political broadcasting rules to teletext. Finally, MAP contends that the Commission failed to consider such rules as a matter of policy under the public interest standard. It requests that the Commission issue a new *Notice of Proposed Rulemaking* to provide opportunity for full public participation on this issue.

10. Geller agrees with the Commission that fairness/political broadcasting regulations should not be applied to teletext, but is of the opinion that the Commission's arguments supporting this policy are inadequate and that, in fact, it cannot legally exempt teletext service from such regulation. Geller suggests as an alternative approach that the Commission adopt a policy whereby it would not entertain complaints in these areas with respect to teletext, but instead would examine public interest issues in the context of license renewal and state that it would reexamine the need for new policies based on experience.

11. The NAB responds to MAP and Geller on this issue and defends the

[5] *Report and Order* at paras. 9, 10, and 44.

[6] The Commission initiated a separate proceeding to consider authorization of data signals on the VBI in a *Notice of Proposed Rule Making*, adopted on February 15, 1984 (49 FR 10556, published March 21, 1984).

[7] In the *Notice*, the Commission had proposed to make line 21 of the VBI available for teletext on a general basis. This would have allowed all forms of teletext, including the current caption system, to be transmitted on line 21 and would have granted authority for public broadcasters to offer remunerative services on line 21 using either teletext technology or the existing caption system with its two text channels. After reviewing the record on this proposal, the Commission decided to withhold the general authorization of teletext on line 21 for a period of five years, after which it would reconsider its policy on this issue. The effect was to allow non-commercial broadcasters to operate remunerative services on teletext, but not on the text channels of the line 21 system.

[8] The modifications to § 73.682 proposed by UWS are:

(1) In subparagraph (a)(22)(ii), delete the underscored: (ii) At time when line 21 is not being used to transmit a program-related data signal, *data signals that are not program related may be transmitted, PROVIDED: The same data format is used and the information to be displayed is of a broadcast nature.*

(2) Replace with: Teletext services authorized in § 73.646(c) may be transmitted, provided the same data format is used.

[9] PBS states that the only apparent reason for UWS's assumption that it cannot operate commercial services on line 21 is the restriction in § 73.621(e) that generally prohibits public stations from providing commercial services.

Commission's decision as procedurally correct, good law, and sound policy. In response to MAP's charge that the Commission gave inadequate notice of its intention not to apply fairness and political broadcasting obligations to teletext, the NAB points to paragraph 17 of the *Notice* and states that it is difficult to understand the contention that this was not adequate notice. The NAB further submits that the fact that eight parties, including MAP itself, addressed the issue suggests strongly that there was adequate notice.

12. The Commission disagrees with MAP's contention that it did not provide adequate notice on the issue of the applicability of the political broadcasting requirements and the Fairness Doctrine to teletext. As stated by the NAB, the fact that eight parties, including MAP itself, commented on this issue is clear indication that there was adequate notice. Accordingly, MAP's request that the Commission issue a new *Notice of Proposed Rule Making* to study this issue is being denied.

13. The issue of whether the law requires that political broadcasting and Fairness Doctrine requirements to be applied to teletext were fully considered by the Commission in the *Report and Order*.[10] Neither MAP nor Geller present any new facts in support of the position that political broadcasting and Fairness Doctrine obligations must be applied to teletext as a matter of law.[11] Rather, the arguments of both MAP and Geller merely repeat arguments that the Commission considered and rejected in its own analysis. Further, the question raised by MAP as to whether fairness and political broadcasting rules should be applied as a matter of policy was decided in the *Report and Order*.[12] The approach suggested by Geller, whereby the Commission, as a matter of policy, would examine such issues only in the context of renewal, is similarly unwarranted in view of the Commission's decision on this matter. Accordingly, petitioners' requests for revisions to the Commission's teletext policy with respect to sections 312(a) and 315 of the Act are being denied.

14. We think it is useful at this juncture, however, to more extensively discuss the nature and scope of our findings in this area to assure that petitioners and the public understand both the narrow scope of the issues involved here, and the basis upon which we make these findings. First, we dispute the contrary implications of some petitioners and reaffirm our intention to pursue continued enforcement of these content-related broadcast laws, policies and rules until and unless they are altered by ourselves or by other competent authority.[13] This, however, in no way alters or diminishes our authority and responsibility to interpret and apply these as necessary when novel question and circumstances arise. This is particularly true as in this situation where new services are being authorized that could not or were not contemplated when Congress passed related statutory provisions nor when this Commission enacted rules and policies designed to give force to these provisions. Our attention is further focused in this area where the changing nature of the industry due both to competitive and technological flux requires us to give primary concern to the First Amendment implications of our actions. Second, we note that the question of content regulations as specified in Title III of the Communications Act and as elaborated in our rules and policies need only be addressed in what we reasonably expect will be a very narrow range of situations, *i.e.*, where television broadcasters will be offering teletext services in a manner that is closely related to traditional print media, and especially where teletext is used for the retransmission of media such as newspapers and magazines.[14] However, we note that to date this service has not yet gone beyond the early experimental stage and that many of those who have made experimental offering of this service have not yet found a mix of offerings that appears clearly destined to find widespread consumer acceptance. Because no preferred mode of operation relative to our statutory regulatory schemes has emerged, we believe it is particularly important to be cautious at this stage so as not to make sweeping predictions and rigid regulatory decisions. In light of the apparent market difficulties of this emerging technology, we are reluctant to add unnecessary regulatory burdens where no showing of need for regulation yet exists.

15. Notwithstanding the preliminary nature of our findings, we think it is necessary and appropriate here to reaffirm our decision in the *Report and Order* to forbear from applying traditional broadcast content controls on broadcasts even when they offer teletext service in a broadcast mode. In this context we view our decision here as no way inconsistent with the court's views in *NAB* v. *FCC*, 740 F. 2d 1190 (D.C. Cir. 1984), for the reasons detailed below. We consider teletext clearly as an ancillary service not strictly related to the traditional broadcast mode of mass communication. First, the very definition of teletext confined the service to traditional print and textual data transmission. See para. 3, *supra*. Thus, although these data will be transmitted at some point through the use of the electromagnetic spectrum, its primary and overriding feature will be its historical and cultural connection to the print media, especially books, magazines and newspapers. Users of this medium will not be listening or viewing teletext in any traditional broadcasting sense, but instead will be *reading* it, and thus be able to skip, scan and select the desired material in ways that are incomparable to anything in the history of broadcasting and broadcast regulation.[15] In this light, we believe that the content regulations created for traditional broadcast operations are simply out of place in this new print-related textual data transmission medium. We decline to attribute to Congress an intent to extend broadcast content regulation, such as those contained in section 315, to this new medium. Even if we were to assume that Congress intended for section 315 to apply, that section imposes no new duties under our existing and longstanding rules enforcing that provision. For example, one threshold criterion for the application of Section 315 has been "use" by a candidate for public office. In general, this "use" criterion requires that in order for section 315 to apply, a candidate's voice or picture must appear on the program or announcement in such a way that they will be identified by members of the audience. Such as "use" is not possible in the context of teletext, just as it would not be possible in any of the

[10] *Report and Order*, paragraphs 54–60.

[11] *Id.*, paragraphs 55–58.

[12] *Id.*, paragraph 54.

[13] *See e.g. Syracuse Peace Council*, FCC 84–518, adopted October 26, 1984; *Notice of Inquiry*, FCC 84–140, released May 8, 1984, paragraph 3.

[14] We need not address separately material transmitted by teletext that is clearly related to and substantially a part of a broadcast program, such as second language translation or captioning for the deaf. We assume that these special and limited transmissions will merely duplicate and enhance their associated broadcasts. Thus, any question of statutory content regulation for these transmissions can and would necessarily be fully contained within the ordinary resolution of such questions in the traditional broadcast context, and we find no need to apply additional and distinct treatment for the teletext transmission.

[15] We also note that functionally the electromagnetic transmission of these services can be compared with the state of the art in modern newspaper production where news is often gathered, edited and formatted in one location, and then sent by satellite to remote locations for printing and eventual delivery.

traditional media consisting exclusively of text. Congress has been fully cognizant of our implementation rules in this area and we can reasonably assume their concurrence with our interpretations here.

16. Along the same lines, we note that affirmative access obligations, such as those contained in section 312(a)(7) for federal political candidates, can be satisfied by the broadcaster over the main channel. Guided as we are in such matters by a reasonableness standard, we find that a broadcaster could satisfy the "reasonable access" rights of a candidate without use of teletext. Thus, whether or not Congress intended these provisions to apply to teletext, the duties they impose are met by main channel service anyway. This satisfaction of current sections 315 and 312(a)(7) obligations by the main channel buttresses our conclusion that these content duties should not be extended to teletext.

17. In this regard, we are also guided by the paramount consideration given by this Commission, the Congress, and the Supreme Court to all issues related to the First Amendment, and the overriding intent of all these institutions to ensure that these fundamental freedoms are not unwarrantedly abridged. Our decision to forbear is driven by such concerns, and we take as our lead here the decision of the Supreme Court in *Miami Herald Publishing Co.* v. *Tornillo,* 418 U.S. 241, 1974, where the Court unanimously invalidated a Florida statute creating a right for candidates to equal space to reply to criticism in newspapers. The Florida right to reply is substantially equivalent to the law and policy we would be creating here if we applied section 315 to teletext transmissions offered in a "broadcast" mode. As the Court found there, we find that neither the letter nor the purposes of the First Amendment would be served by such a ruling. Quite simply, this Commission would be required to intrude into the editorial judgments of teletext editors. "The choice of material to go into a newspaper, and the decisions made as to limitations on the size of the paper, the content, and treatment of public official—whether fair or unfair—constitutes the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time." *Id.* at 258. Given this clear statement of the Court, and the historical sensitivity of the Congress to these issues, we are unable to construe the intent of Congress to apply section 315 and similar statutory provisions, and our associated rules and policies, to the teletext medium.[16]

Regulatory Status of Teletext Services

18. As discussed in the *Report and Order,* the teletext authorization permits a wide range of service applications, many of which do not resemble traditional forms of broadcasting. The Commission recognized that some teletext activities could take on the characteristics of common carrier or private carrier services and therefore included provisions in the rules to regulate such services in an appropriate manner. Under the policies and rules the Commission set forth in the *Report and Order,* private carrier and common carrier services are subject to rules governing similar existing services.

19. The NAB petitions the Commission to reverse its decision on the regulatory status of non-broadcast related teletext and refrain from imposing common carrier status on any form of teletext service. It also requests that the Commission preempt state and local common carrier regulations that would otherwise apply to teletext.

20. The underlying thesis of the NAB's position is that to allow the form of teletext to determine its regulatory status will cause great confusion for service providers and needless delays in the initiation of teletext service. It argues that the Commission should not substitute common carrier regulation for market dynamics and that to impose such regulatory burdens is contrary to the entire purpose of authorizing teletext.

21. In support of its postition, the NAB argues that common carrier regulation is inconsistent with teletext's ancillary status. First, it states the opinion that to impose common carrier status on some forms of teletext ignores the act that a licensee has a responsibility to exercise control over everything transmitted over its channel, including the VBI. According to the NAB, under common carrier law the licensee would be prohibited from exercising the control necessary to fulfill this responsibility. The NAB further argues that common carrier status would contravene section 3(h) of the Communications Act which states, in relevant part, that:

> . . . but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier. 47 U.S.C. 3(h)

The NAB next contends that the Commission's policy of regulating teletext in accordance with the nature of the service and the manner in which it is offered increases both the cost and risk associated with developing some forms of teletext. The NAB states that it would be costly and difficult for stations to make initial determinations regarding service type under the *NARUC I* test and that good faith determinations that a service was not common carriage would be subject to challenge.[17] Finally, the NAB indicates that the burdens imposed by state common carrier regulation are often worse than those of federal regulation and that in many cases state regulations effectively prevent new entries into a common carrier field.

22. The Commission is not persuaded by the arguments presented by the NAB that it should alter its decision with respect to regulation of non-broadcast related teletext service. The rules and policies pertaining to non-broadcast related teletext were formulated to provide a fair and equitable system for regulating teletext services that are similar to services provided by regular private and common carrier licensees. If, for some reason, the Commission were to modify the regulations applicable to a particular service, then such changes would automatically apply to teletext services operating under the authority of that service.

23. The Commission sees no reason why application of the *NARUC I* test should prove more burdensome to a teletext operator than to an applicant or licensee in some other private or common carrier service. Nor is there reason to believe teletext operators will experience undue or inordinate delays in the initiation of service as a result of the application process for authority to operate as a common carrier.[18]

24. The Commission disagrees with the NAB's argument that common carrier regulation is inconsistent with teletext's ancillary status. In the role of a private or common carrier providing access to teletext transmission facilities, the licensee is responsible for ensuring that its operation conforms to technical operating requirements and the rules

[16] For instance, some of the current teletext operations involve newspaper publishers. Suppose a newspaper decided to deliver its service by teletext, as opposed to delivery of hard copy. We are reluctant at this juncture to change the First Amendment protection afforded the print medium because of this change in delivery mode, absent sufficient justification for less protection.

[17] *See, National Association of Regulatory Utility Commissioners* v. *F.C.C.,* 525 F. 2d 630 (D.C. Cir. 1976), *cert. denied,* 425 U.S. 922 (1976).

[18] Private carrier services require only a letter notifying the Commission prior to initiation of service.

applicable to the particular service being provided. The broadcaster would not be expected to monitor or otherwise supervise the content of the teletext transmissions beyond that required by the rules of the service offered. With regard to NAB's contention that common carrier status would contravene Section 3(h) of the Act, that section intended only to prevent the Commission from imposing common carrier-type regulatory obligation in situations where a licensee is authorized, and wishes, to maintain editorial control over programming transmissions. It does not prevent the Commission from imposing obligations where a licensee elects voluntarily to operate as a common carrier rather than retain control over the content of transmissions, as would be the case here. *See generally CBS* v. *DNC*, 412 U.S. 945 (1973).

25. In summary, the Commission finds that the NAB has not demonstrated any manifest error or omission in the decision with respect to the federal regulatory status and treatment of non-broadcast related teletext activities, nor has it presented any new information on this issue which was not available to it, or the Commission, during the course of the comment and deliberative phases of this proceeding.[19] Accordingly, the Commission will deny the NAB's request to alter its policy towards the federal regulatory status of non-broadcast related teletext.

26. With regard to the preemption issue, the Commission ruled on the NAB's request to preempt state regulation of common carrier teletext services in a *Memorandum Opinion and Order* adopted April 26, 1984 (49 FR 19659) in the FM subcarrier proceeding, BC Docket 82-536.[20] In this decision, the Commission determined that state regulation that has the effect of prohibiting or impeding entry of common carrier services provided through teletext, FM subcarrier, and TV aural baseband subcarrier facilities frustrates its federal objectives in authorizing these services and making this spectrum available for new uses and therefore should be preempted.[21] The preemption of state authority is limited to regulation that affects entry. In this regard the Commission stated that "other than the preemption of entry regulation, we intend no change in the existing division of regulatory authority between the Commission and the states."[22]

Cable Carriage of Teletext

27. Fourteen parties, primarily representatives of the broadcast industry, request that the Commission reverse its policy on cable carriage of teletext and either require carriage of all teletext or, in the alternative, adopt a "no-strip" rule.[23] The petitioners base their requests largely on the grounds that the Commission misunderstood important facts concerning this issue in relation to technical matters and that the Commission may not have fully appreciated the effect of its decision on the future of teletext service.

28. Many of the petitioners believe that the Commission based its decision on a concern that retransmission of teletext might pose serious technical problems for some cable systems and that the modifications to technical facilities necessary to overcome these problems would impose significant costs on cable operators. They argue that in fact few, if any, cable systems would have to upgrade their systems to carry teletext. Several proponents of mandatory carriage also disagree with the Commission's position that teletext is not analogous to the kinds of service that have traditionally been accorded mandatory carriage status. In a statement that is expressive of the general consensus of the petitioners, CBS argues that teletext services are enhancements of existing retransmitted broadcast services and as such contain material directed to the needs and interests of all viewers in a broadcaster's service area, especially material such as captioning and superimposed text that is directly related to the accompanying program material.

29. PBS and Community Telecasters of Southern California (CTSC) are concerned that if cable systems do not carry teletext, it will result in substantial economic harm to public broadcasting stations. Finally, a number of parties believe that the Commission's decision on the cable carriage issue was influenced by a belief that cable systems would be obligated to retransmit program-related teletext under the requirements of the Copyright Act. The consensus of the petitioners on this point is that copyright protection is not adequate to protect the public interest objectives of the mandatory carriage rules and that the Commission should not ignore its responsibility to protect teletext service by deferring to copyright law.

30. Four parties filed oppositions to the requests for reconsideration on the cable carriage issue. On the technical issue, cable operators concede that a modern, well-designed, and properly maintained cable system should have little problem with either on-channel or adjacent-channel interference from teletext transmitted by broadcasters. However, they maintain that there are likely to be situations where some technical problems will occur.

31. Opponents of mandatory carriage argue in support of the position that teletext is not subject to the public interest rules and requirements that have provided the basis for the must carry rules. They also refute petitioners' statements regarding the economic consequences of allowing cable systems to delete broadcasters' teletext and provide examples of situations where retransmitting teletext could pose technical problems. Southern Satellite Systems (SSS) counters broadcaster claims that copyright law is not adequate to protect program-related teletext and believes that these issues can best be resolved through negotiations between the parties.

32. Finally, NCTA submits that those petitioners who propose a simple no-strip rule misunderstand the problem. NCTA states that the usability of a

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[19] We recognize, of course, that the United States Court of Appeals has remanded for further consideration some related aspects of the Commission decisions in the *DBS Report and Order*, 90 F.C.C. 2d 676 (1982) and the *G.T.E. Satellite Corp., 90 F.C.C. 2d 1009 (1983). See: National Association of Broadcaster* vs. *F.C.C.*, 740 F. 2d 1190 (D.C. Cir., 1984); *United States Satellite Broadcasting* vs. *F.C.C.*, 740 F. 2d 1147 (D.C. Cir., 1984). As discussed above, our legal and policy determinations here rest primarily on the print-related characteristics of the teletext medium, grounds that are independent of the issues addressed in those cases.

[20] The preemption issues raised in the Fm subcarrier, teletext, and TV aural subchannel (Docket No. 21323) proceedings were all substantially identical. The Commission therefore chose to resolve the preemption issues in each of these separate proceedings with a single decision. In making this decision, the Commission fully considered all of the comments and other filings that were submitted in each of the three proceedings. *See*, FM Subcarrier *Memorandum Opinion and Order, supra*, Footnote 6. On reconsideration of the FM Subcarrier *memorandum Opinion and Order, supra*, we concluded that the public had been afforded adequate notice that we might decide to preempt state entry regulation. *See, Memorandum Opinion and Order* in BC Docket No. 82-536, adopted November 8, 1984. We also note that on reconsideration in this proceeding NAB requested that we preempt state regulation. Thus, as in our FM Subcarrier proceeding, interested parties have had an opportunity to address the preemption issue.

[21] FM subcarrier *Memorandum Opinion and Order, supra*., paragraph 17.

[22] *Id.*, footnote 24.

[23] As an alternative to mandatory carriage rules that require a cable operator to ensure the technical quality of the retransmitted teletext signals, PBS suggests that the Commission adopt a simple "no-strip" rule. It states that this option would resolve the concerns of the cable industry for technical problems, and the expense of plant modifications necessary to overcome them, by not requiring cable systems to take any affirmative action to carry broadcasters' teletext.

signal, specifically the undesirability of retransmitting a poor signal, is the very reason a cable operator would delete the signal. It argues that any form of mandatory carriage rule could unnecessarily subject a cable operator to service calls and subscriber dissatisfaction and force it to offer an inferior or unusable product.

33. The technical information presented by parties on both sides of the must carry issue establishes that, with some exceptions, most well maintained cable systems would not experience either on-channel or adjacent channel interference in retransmitting teletext signals. The Commission however did not base its decision, as some petitioners believe, on the expectation that retransmission of teletext would pose serious technical problems for cable systems. While this subject was discussed in the course of the Commission's deliberations, the Commission's primary consideration is whether teletext services merit mandatory carriage protection under the public interest standards that it has traditionally applied in such matters. Upon examination of the petitioners' statements in light of these standards, the Commission concludes that they have not made the requisite showing for grant of their requests either to require carriage of all teletext signals, or alternatively, to adopt a "no-strip" rule for all teletext signals. The petitioners' present no new information or evidence to alter our initial determination that teletext services in general are not analogous to the types of services that have traditionally been accorded must carry status.[24]

34. While we reject the petitioners' request for must carry status for all teletext signals, the Commission is aware of the arguments raised by the petitioners for a limited requirement for carriage of teletext signals such as captioning and text services that are related to the main television program service. The Commission notes that it has recognized a similar distinction between program enhancements and other uses of ancillary facilities in its consideration of must carry protection for TV aural baseband subcarriers. In the *Second Report and Order* in Docket No. 21323, 49 FR 18100, the Commission indicated that it was conscious of the arguments raised by some parties regarding the need for must carry regulation to protect TV aural subcarrier signals used for program-related purposes such as stereophonic sound and second language service.[25] However, the Commission stated that it needed additional information before deciding on must carry status for TV aural subcarriers. It therefore issued a second *Further Notice of Proposed Rule Making* in Docket No. 21323 on July 26, 1984 (49 FR 32619) to further examine this one issue.

35. The Commission considers the record in the teletext proceeding to be sufficient to support a decision on must carry status for program-related teletext and thus does not intend to seek additional comment and information from the public on this question. However, in view of the similar natures of the must carry issues for program-related aural subcarriers and teletext, the Commission believes it would be appropriate to resolve both matters at the same time. Accordingly, the Commission is postponing action on the reconsideration of must carry status for teletext that is directly related to normal television service until it takes final action on the must carry issue for program-related TV aural subcarriers.

Effective Date of the Teletext Rules

36. The Commission specified that the teletext rules would be effective upon adoption of the *Report and Order*, rather than the usual effective date of thirty days after the decision is published in the **Federal Register**. There was, however, an error in the *Report and Order* that was released on May 20, 1983, in that the stated effective date of June 27, 1983 did not agree with the discussion in the text, at paragraph 90, that the rules would be made effective upon their adoption. An *Erratum* to correct this mistake and make the effective date March 31, 1983 was issued on June 2, 1983.

37. The Media Access Project (MAP) asserts that the Commission's action on this point violated section 553(d) of the Administrative Procedures Act (APA), 5 U.S.C. 553(d), and requests it to take appropriate corrective action. MAP argues that the Commission, by issuing the *Erratum*, made the rules effective almost two months prior to their publication. It further states the Commission failed to offer any reasons why any of the exceptions to section 553(d) should apply.[26]

38. The Commission acknowledges that the error concerning the effective date of the rules was unfortunate and may have produced some degree of confusion and uncertainty for the industry and other parties with an interest in the teletext proceeding. However, in view of the absence of any specific complaints of adversity concerning the effective date of the rules, it appears that this mistake has not resulted in any serious or significant harm to any party.

39. As discussed in paragraph 90 *supra*, and paragraph 90 of the *Report and Order* the Commission believes that to permit stations to shift their teletext operations to production mode at the time the *Report and Order*, was adopted was consistent with furthering the development of services that it found to be in the public interest. Therefore, the Commission holds that this objective constitutes the good cause provided for under exception (3) to section 553(d). In addition, because the rules authorizing teletext relieve a restriction upon licensees, the 30 day effective date provision of the APA is not applicable. *See* U.S.C. 553(d)(1).

40. Accordingly, the Commission concludes that while there were minor procedural discrepancies associated with the effective date of the rules, these mistakes were not significant and no corrective action is warranted.

41. Accordingly, it is ordered, that the petitions for reconsideration of the *Report and Order*, filed by parties named herein are granted to the extent indicated above, and are denied in all other respects. In addition, it is ordered that Part 73 of the Commission's Rules are amended as set forth in Appendix B, effective March 4, 1985.

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

Federal Communications Commission.
William J. Tricarico,
Secretary.

[24] *Report and Order*, para. 88.

[25] In regard to non-program related teletext material, we believe it appropriate to note that the absence of a must-carry obligation should not be read to approve stripping of broadcast teletext signals by cable operators in an instance which would constitute anti-competitive conduct. Were an actual case of deliberate anti-competitive conduct to be brought before the Commission, we would consider the appropriate remedies at that time. Our goal is to ensure that the development of teletext technology is not unreasonably inhibited.

[26] Section 553(d) of the Administration Procedures Act states:

"The required publication of service of a substantive rule shall not be made less than 30 days before its effective date, except:

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

Appendix A—Petitioners and Respondents

I. All Participating Parties

Petitioners

1. Media Access Project
2. Henry Geller, Donna A. Lampert, and Philip A. Rubin
3. CBS, Inc.
4. National Broadcasting Company, Inc.
5. WGBH Educational Foundation
6. Post-Newsweek Stations, Inc.
7. National Association of Broadcasters
8. Association of Maximum Service Telecasters
9. Community Television of Southern California
10. CBS Network Television Affiliates Association
11. ABC Television Affiliates Association
12. WBNS–TV, Inc.
13. Public Broadcasting Service
14. Midwest Television, Inc.
15. Taft Broadcasting Company
16. University of Wisconsin System

Opposing/Responding Parties

1. California Association of Physically Handicapped, Inc.
2. National Cable Television Association
3. Public Broadcasting Service
4. Southern Satellite Systems, Inc.
5. Time, Incorporated
6. National Association of Broadcasters
7. Joint Opposition of Cable Systems
8. National Captioning Institute
9. Antiope and Telematics Corporation
10. RCA Corporation
11. Satellite Network Delivery Corp.

Replies To Responses

1. Public Broadcasting Service
2. National Broadcasting Company
3. Association of Maximum Service Telecasters
4. Taft Broadcasting Company
5. National Association of Broadcasters
6. Gary Stanton (late-filed)

II. Participating Parties By Issue

A. Issue: Cable Carriage

Petitioners

1. Media Access Project
2. CBS, Inc.
3. National Broadcasting Company, Inc.
4. WGBH Education Foundation
5. Post-Newsweek Stations, Inc.
6. National Association of Broadcasters
7. Association of Maximum Service Telecasters
8. Community Television of Southern California
9. CBS Network Television Affiliates Association
10. ABC Television Affiliates Association
11. WBNS–TV, Inc.
12. Public Broadcasting Service
13. Midwest Television, Inc.
14. Taft Broadcasting Company

Opposing/Responding Parties

1. California Association of Physically Handicapped, Inc.
2. National Cable Television Association
3. Public Broadcasting Service
4. Southern Satellite Systems, Inc.
5. Time, Inc.
6. Joint Opposition of Cable Systems
7. Antiope and Telematics Corporation

Replying Parties

1. Public Broadcasting Service
2. National Broadcasting Company
3. Association of Maximum Service Telecasters
4. Taft Broadcasting Company
5. National Association of Broadcasters
6. Gary Stanton

B. Issue: Fairness Doctrine and Political Broadcasting Requirements

Petitioners

1. Media Access Project
2. Henry Geller, Donna A. Lampert, and Philip A. Rubin

Opposing/Replying Parties

1. National Association of Broadcasters
Replying Parties: None

C. Issue: "For Profit" Services By Noncommercial Stations On The Line 21 System Text Channels

Petitioner

1. University of Wisconsin System

Opposing/Responding Parties

1. Public Broadcasting System
2. National Captioning Institute
Replying Parties: None

D. Issue: Regulatory Status Of Non-Broadcast Teletext Services

Petitioner

1. National Association of Broadcasters
Opposing/Responding Parties: None
Replying Parties: None

E. Issue: Definition of Teletext

Petitioners

1. Henry Geller, Donna A. Lampert, and Philip A. Rubin
2. National Association of Broadcasters
3. Public Broadcasting System
4. University of Wisconsin System

Opposing/Responding Parties

1. Southern Satellite Systems, Inc.
2. Antiope and Telematics Corporation
3. Satellite Network Delivery Corporation

F. Issue: Effective Date of The Rules

Petitioner

1. Media Access Project
Opposing/Responding Parties: None
Replying Parties: None

Appendix B

Chapter I of title 47 of the Code of Federal Regulations is amended as set forth below.

1. Section 73.621 is amended by adding new paragraph (g) to read as follows:

§ 73.621 Noncommercial educational TV stations.

* * * * *

(g) Non-program related data signals transmitted on Line 21 pursuant to § 73.682(a)(22)(ii) may be used for remunerative purposes.

[FR Doc. 85–2682 Filed 1–31–85; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–708; RM–4742; RM–4770]

TV Broadcast Station in Bad Axe, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns and reserves UHF–TV Channels *35 and *57 at Bad Axe, Michigan, as that community's first and second noncommercial educational channels. This action was taken in response to requests from Delta College and Central Michigan University, respectively.

EFFECTIVE DATE: March 26, 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

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Bad Axe, Michigan); MM Docket No. 84–708, RM–4742, RM–4770.

Adopted: January 2, 1985.
Released: January 18, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Marking*, 49 FR 30754, published August 1, 1984, proposing the assignment and reservation of UHF Television Channels *35 and *57 to Bad Axe, Michigan, as that community's first and second noncommercial educational channels. The *Notice* was adopted in response to petitions filed by Delta College ("Delta") and Central Michigan University ("CMU"), respectively. Delta and CMU filed supporting comments reaffirming their interest in the proposed channels, if assigned. There were no opposition to the proposal.

2. Bad Axe (population 3,184),[1] seat of Huron County (population 36,459) is located in the east central portion of the state, approximately 160 kilometers (100 miles) north of Detroit, Michigan.

3. The channels can be assigned in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules. Since Bad Axe is located within 400 kilometers (250 miles) of the U.S.-Canadian border, the concurrence of the Canadian government has been received.

4. In view of the fact that the assignments of Channels *35 and *57 could provide a first and second noncommercial educational television service to Bad Axe, we believe the public interest would be served by the assignments.[2]

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective March 26, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Bad Axe, MI	*35, and *57

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

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

[1] Population figures are taken from the 1980 U.S. Census.

[2] Channel *15 was previously assigned to Bad Axe. However, that channel is unavailable for broadcast use there due to the landmobile usage of UHF channels nearby. Thus we have deleted that channel from the table.

(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. 2675, Filed, 1-31-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-707; RM-4738]

TV Broadcast Station in Flagstaff, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns VHF television Channel 4 to Flagstaff, Arizona, as that community's third commercial television service, in response to a petition filed by Larry G. Fuss, Sr.

EFFECTIVE DATE: March 26, 1985.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Jeffrey D. Sutherland, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Flagstaff, Arizona); MM Docket No. 84-707, RM-4738.

Adopted: January 2, 1985.

Released: January 18, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 30753, published August 1, 1984, proposing the assignment of VHF television Channel 4 to Flagstaff, Arizona, as that community's third commercial television service, in response to a petition filed by Larry G. Fuss, Sr. ("petitioner"). Supporting comments were filed by petitioner reiterating his intention to apply for the channel, if assigned.

2. Flagstaff (population 30,743),[1] the seat of Coconino County (population 75,008), is located in northern Arizona, approximately 300 kilometers (125 miles) north of Phoenix, Arizona. Currently, Flagstaff is served by commercial television Station KNAZ-TV (Channel 2), and Channel 13 for which an application is pending, as well as noncommercial educational Channel *16 (unoccupied and unapplied for).

3. As indicated in the *Notice*, a staff engineering study reveals that VHF television Channel 4 can be assigned to Flagstaff in conformity with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules, provided the transmitter is restricted to an area 8.9 miles south of the community to avoid short spacing on the co-channel to Station KVOA-TV, Tucson, Arizona, and to an application for Channel 4 at Cedar City, Utah. Additionally, since the proposed assignment is within 400 kilometers (250 miles) of the common U.S.-Mexican border, the concurrence of the Mexican government was obtained.

4. In view of the above considerations, the Commission believes the public interest would be served by the allocation of a third commercial television outlet at Flagstaff for the expression of diversified viewpoints and programming.

5. 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 sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective March 26, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to Flagstaff, Arizona, as follows:

City	Channel No.
Flagstaff, AZ	2, 4+, 13, and *16

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

7. For further information concerning the above, contact Nancy V. Joyner or Jeffrey D. Sutherland, 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. 85-2674 Filed 1-31-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures were extracted from the 1980 U.S. Census.

47 CFR Part 97

[FCC 85-36]

Amateur Radio Service Rules to Delete Requirement That Volunteer Examiners Provide Certain Information on Form 610; Amendment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Amateur Radio Service Rules to require only the name and call sign of the volunteer examiner on the candidates' application forms. This amendment is necessary in order to eliminate the requirement for information which is duplicative and is time-consuming to enter on large numbers of amateur applications. The effect of this rule amendment is to relieve the present burden on the examiners in the volunteer examination program.

DATE: February 14, 1985.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Radio.

Order

In the matter of Amendment of § 97.28 of the Amateur Radio Services Rules to Delete Requirement for Certain Information from Volunteer Examiners on Form 610; FCC 85-36.

Adopted: January 18, 1985.
Released: January 25, 1985.

By the Commission.

1. The Commission has received a petition, filed August 20, 1984, by the Volunteer-Examiner Coordinator Committee of the Dayton Amateur Radio Association (DARA). DARA has requested that § 97.28 of the Commission's Rules be amended so that only the name and call sign of the Volunteer Examiner (VE) need be entered on the candidates' applications for amateur license (Form 610). In support of its petition, DARA states that the information requested from the VE on the Form 610 is to provide the Commission with certain data as to the qualifications of the VE administering the exam. DARA believes that this information merely duplicates the Volunteer Examiner Coordinator's (VEC's) responsibility to determine the qualifications of and to certify VE's. DARA also feels that obtaining data from the VE's which is already contained on their amateur radio licenses unnecessarily clutters the form making it more difficult and time-consuming to complete.

2. In general, we would prefer not to make major changes in the Amateur Radio Services volunteer examination program until we have gained more experience with it and can better determine which changes are required to make it run more smoothly. However, the change DARA requests has merit and is one that can be accomplished very simply. Until the Form 610 is revised, VE's need only enter their names and call signs on the form. The spaces calling for the VE's mailing address, class of operator license and license expiration date may be left blank.[1] Necessary corrections will be made to the Form 610 when it is next revised.

3. In this proceeding, the prior notice and comment procedure of the Administrative Procedure Act (APA) is unnecessary. The rule change is non-controversial because the information that we will no longer require is contained in the Commission's license records. See 5 U.S.C. 553(b)(B). The APA's effective date requirements do not apply to this rule amendment because it relieves an existing restriction. See 5 U.S.C. 553(d)(1).

4. Inasmuch as a Notice of Proposed Rule Making is not required, the Regulatory Flexibility Act of 1980 does not apply.

5. In view of the foregoing, the petition of DARA is granted.

6. It is further ordered, That Part 97 is amended as set forth in the Appendix. This action is taken pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended. It is further ordered, That this rule amendment is effective February 14, 1985.

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

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

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix I

PART 97—[AMENDED]

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

Section 97.28(f)(1) is revised to read as follows:

§ 97.28 Examination administration.

* * * * *

(f) * * *

(1) Examiners' names and amateur radio call signs;

* * * * *

BILLING CODE 6712-01-M

[1] Interested parties who reproduce Form 610 are encouraged to block out the VE's mailing address, operator class and license expiration date as shown in Appendix II.

APPENDIX II

SECTION II — EXAMINATION INFORMATION

SECTION II-A. To be completed only by the Volunteer Examiner administering the Novice Class Examination.

1. VOLUNTEER EXAMINER'S NAME: (First, MI, Last, Suffix)

2. VE'S MAILING ADDRESS: (Number, Street, City, State, ZIP Code)

3. VE'S OPERATOR CLASS:
☐ GENERAL ☐ ADVANCED ☐ AMATEUR EXTRA

4. VE'S STATION CALL SIGN

5. LICENSE EXPIRATION DATE:

6. IF YOU HAVE AN APPLICATION PENDING FOR YOUR LICENSE, GIVE FILING DATE:

CERTIFICATION

I CERTIFY THAT I have complied with the volunteer examiner requirements stated in Section 97.31 of the Commission's Rules, THAT I have administered to the applicant and graded an amateur radio operator examination in accordance with Sections 97.27(a), (c), 97.28(b), and 97.29 of the Commission's Rules; THAT the applicant has passed element 1(A) and element 2 or I have examined documents held by the applicant and the applicant is given telegraphy examination credit in accordance with Section 97.25 of the Commission's Rules.

7. SIGNATURE: (Must match Item 1) DATE SIGNED:

SECTION II-B. This section must be completed by all three Volunteer Examiner Team members administering an examination for the Technician, General, Advanced, or Amateur Extra Class operator license.

1A. VOLUNTEER EXAMINER'S NAME: (First, MI, Last, Suffix)

1D. VE'S STATION CALL SIGN:

2A. VOLUNTEER EXAMINER'S NAME: (First, MI, Last, Suffix)

2D. VE'S STATION CALL SIGN:

3A. VOLUNTEER EXAMINER'S NAME: (First, MI, Last, Suffix)

3D. VE'S STATION CALL SIGN:

CERTIFICATION

I CERTIFY THAT I have complied with the volunteer examiner requirements stated in Section 97.31 of the Commission's Rules; THAT I have administered to the applicant and graded an amateur radio operator examination in accordance with Sections 97.28 and 97.29 of the Commission's Rules; THAT I have indicated in the VOLUNTEER EXAMINER TEAM REPORT those examination elements the applicant passed; THAT I have examined documents held by the applicant and I have indicated in the VOLUNTEER EXAMINER TEAM REPORT those examination elements for which the applicant is given examination credit in accordance with Section 97.25 of the Commission's Rules.

1F. SIGNATURE: (Must match Item 1A) DATE SIGNED:

2F. SIGNATURE: (Must match Item 2A) DATE SIGNED:

3F. SIGNATURE: (Must match Item 3A) DATE SIGNED:

FCC Form 610
June 1984

GPO : 1984 O - 447-593

[FR Doc. 85-2684 Filed 1-31-85; 8:45 am]

BILLING CODE 6712-01-C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 82-09; Notice 2]

Federal Motor Vehicle Safety Standards; Brake Hoses

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: The purpose of this notice is to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 106, *Brake Hoses*, by allowing the use of brake hoses that are labeled in metric sizes. The agency received a petition for rulemaking from Saab-Scania to amend Standard No. 106 to allow the use of millimeter sizes in the labeling of air brake hose. The agency issued a notice of proposed rulemaking which proposed to allow manufacturers to label their brake hoses with metric units, and provided performance requirements in the standard for metric sized brake hoses which were equivalent to the present requirements for English sized hoses. This final rule primarily addresses Saab-Scania's petition to allow the use of brake hoses manufactured in metric sizes and is thus more limited than the proposal.

EFFECTIVE DATE: June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Bloom, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2153).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard (FMVSS) No. 106, *Brake Hoses*, sets performance and labeling requirements for brake hoses used in motor vehicles. Section 7.2.1(d) and 7.2.2(d) of FMVSS No. 106 require that air brake hoses and end fittings be labeled for size in inches or fractions of inches. The standard currently permits information such as metric labeling to be placed on hoses as additional information.

In June 1981, the agency received a petition for rulemaking from Saab-Scania to amend sections 7.2.1(d) and 7.2.2(d) to permit labeling in metric units as an alternative to inches. On April 12, 1982, the agency published a notice in the **Federal Register** (47 FR 15612) granting the petition and proposing that various sections of the standard be amended to permit labeling in metric units.

The notice explained that permitting use of metric sizes is consistent with Federal policy concerning metric conversion and that the proposed amendments would aid international harmonization. As the agency has explained in other notices, international harmonization can result in decreased costs, benefiting both consumers and manufacturers, without an adverse effect on safety. In issuing the notice, the agency emphasized that the proposed amendments would not make any change in performance criteria applicable to a particular size of hose. The notice included performance requirements for the new metric sizes of brake hoses which were the same as the requirements for brake hoses of comparable English sizes.

Although the language of this amendment uses the terms "hoses" and "tubing," it is emphasized that "brake hose" comprises both terms. Standard No. 106 defines "brake hose" as a flexible conduit, other than a vacuum tubing connector, manufactured for use in a brake system to transmit or contain the fluid pressure or vacuum used to apply force to a vehicle's brakes. As explained in past Federal Register preambles, the term "brake hose" includes traditional rubber hose and plastic tubing. All brake hoses are subject to the standard and to appropriate tests for the environment in which they serve.

The agency received a number of comments on the proposal, all of which have been carefully considered. Most commenters supported the concept of permitting labeling in metric units. Some commenters suggested various ways to rewrite parts of the standard for purposes of clarity or to address safety concerns not directly related to the proposal. The agency may consider these suggestions, as well as other issues, as part of its efforts to modernize Standard No. 106 to address current technological developments in the industry. However, in order to resolve the specific concerns raised by the Saab-Scania petition, the agency has decided to limit its actions at this time to adopting a final rule which directly addresses Saab's petition.

This final rule permits the use of brake hoses and end fittings that are labeled in metric units. In response to concerns raised in the comments that it might be unclear whether a hose or fitting is inch-sized or metric-sized if the unit of measurement is not included in the label, the final rule requires that metric labeling include the abbreviation "mm" to designate that the labeled units are metric. Finally, the final rule does not adopt the proposed Table III(a).

Conversion

Most commenters to the notice of proposed rulemaking (NPRM) supported the concept of permitting labeling of brake hoses and end fittings in metric units. A number of commenters, however, expressed concerns about specific aspects of the proposal.

Several commenters specifically addressed the issue of conversions from metric to English units or English to metric units. General Motors (GM) stated that while the premable of the NPRM indicated that metric units of any size would be allowed, the actual text proposed for the amended standard used only integer units. GM stated that this approach appeared to discourage soft conversions. (A soft conversion is an exact conversion, which tends to result in non-integer units, e.g., ½ >inch = 12.7 mm. By contrast, a hard conversion involves rounding off to an integer, e.g., ½ inch = 13 mm.) GM stated that soft conversions may be the best interim approach to export products and to increase understanding of metrics in this country. GM suggested that the easiest way to specify the size-related requirements of the standard, without discouraging soft conversions, would be to establish requirements for a continuum of metric sizes. Eaton commented that the proposed amendment should specify that a manufacturer wishing to label a ½ inch outside diameter (O.D.) tube metrically should label this hose "12.7mm (½ in.) O.D." and not "12mm O.D." Ford interpreted the notice as allowing manufacturers the option of labeling brake hoses in either metric or English unit sizes.

Several commenters emphasized that only soft conversions should be permitted, unless and until industry agrees on hard metric numbers. The Rubber Manufacturers Association (RMA) stated that a ¼ inch hose should be marked either ¼ inch or 6.4 millimeters until such time as a hose in hard metric dimensions is produced. Stratoflex stated that United States manufacturers have made great progress in encouraging the international industrial community to standardize on inch size hose and that it should not be assumed that there is any need for the domestic industry to develop a line of hoses with whole metric dimensions.

Other commenters also addressed issues related to conversions. Several commenters emphasized that inch size fittings must not be used with metric size hose, since a mismatch could

reduce performance and result in accidents. Goodyear objected to hard conversions of hose sizes because this would encourage the use of English sized fittings with metric sized hoses (and vice versa) which could lead to coupling compatibility problems.

In response to the comments on conversions, the agency reiterates that NHTSA did not intend to encourage conversions of either inch size or metric size hose or fittings. The agency primarily contemplated that hoses that were manufactured in inch size units would be labeled in inches, and hoses that were manufactured in integer metric units would be labeled in metric units. The agency intended to allow the use of metric sized brake hoses in the American market, using the appropriate metric size labeling to denote the "as manufactured" size.

It should be noted, however, that with the exception of air brake hose intended for use with reusable end fittings, Standard No. 106 does not currently limit the sizes or specify the dimensional tolerances of brake hose. While the standard does specify some requirements and test conditions in terms of specific sizes, the standard does not prohibit sizes other than those listed, except for air brake hose intended for use with reusable end fittings. Apart from the above exception, manufacturers are not limited to the hose sizes listed in the standard. They may produce sizes of brake hose other than those listed. The test values for such sizes would be provided by reference to the nearest appropriate size that is listed in the standard.

Industry has voluntarily standardized the sizes and dimensional tolerances of inch size brake hose and fittings, primarily through the auspices of the Society of Automotive Engineers (SAE). It is critical that a hose or fitting marked with an inch size correspond dimensionally to accepted industry practices. A conversion of a metric size hose to an inch size that resulted in labeling outside the scope of accepted industry dimensional practice, such as by hard conversions (i.e., rounding off) might well constitute a safety defect, since a mismatch could result in serious accidents due to brake hose assembly failure. It is particularly important in the case of air brake tubing and fittings, since these are often assembled in repair shops rather than in factories where there usually exists more control over the matching of hoses and fittings.

Since Standard No. 106 does not limit the sizes of most types of brake hose, manufacturers are not currently prohibited from using standard metric sized hose if they label the hose sizes in inches. It should be emphasized, however, that in proposing the amendment, the agency did not intend to encourage conversions of any sort.

The same analysis discussed above applies to converting inch sizes to metric sizes. The agency did not intend to encourage these types of conversions when the amendment was proposed. However, if manufacturers choose to make conversions of inch sizes into metric sizes, the conversions should be within the scope of accepted dimensional practice of the international industry.

Mismatch Problems

Stratoflex expressed concern that the existence in the same marketplace of both inch and metric size hose and fittings could result in mismatch problems. That comment was specifically directed toward air brake tubing. Stratoflex's concern addressed the definition in Standard No. 106 of "permanently attached end fitting" which includes hose fittings which use sacrificial sleeves. Stratoflex stated that air brake tubing assemblies are often assembled in repair shops by mechanics who insert a fitting into a nylon tube and use an ordinary wrench to deform a sacrificial sleeve about the outside diameter of the tube to make the connection. Stratoflex stated that machanics cannot be expected to know the difference between inch and metric fittings when neither fitting is marked for "size and type control." That commenter stated that the agency should either require inch size air brake tubing only, set a date to require metric size air brake tubing only, or establish additional marking rules for tubing and tube fittings and dimensional control for both inch and metric size tubing.

Stratoflex is correct that the standard's definition of permanently attached end fitting includes end fittings that are attached by use of a sacrificial sleeve. It is this type of fitting that is typically used for air brake tubing. That commenter is incorrect, however, in stating that these fittings need not be marked for size. Section S7.2.2 of Standard No. 106 requires that end fittings must be labeled as to size except for end fittings attached by deformation of the fitting about a hose by crimping or swaging. Crimping or swaging is a process that is done by the manufacturer of the hose during the assembly of a hose. It does not include using a wrench to deform a sacrificial sleeve around tubing. This latter type of fitting (i.e., utilizing a sacrificial sleeve) would be required to be marked as to size.

Stratoflex stated that the agency should establish additional marking rules for dimensional control for both inch and metric tubing as currently required by Table III of the standard. Table III specifies precise dimensions for two nearly identical reusable air brake hoses and fittings. They are required to be specifical by marked as Type AI or AII, in order to differentiate between these air brake assembly components in the field. While type control is relevant for reusable air brake hose, the agency is not aware of the existence of different types or sizes of air brake tubing that would necessitate special marking requirements.

It appears that Stratoflex may be referring to the question of whether a hose is inch or metric size. While the April 1982 NPRM proposed permitting labeling in either metric units or inches, the proposed language said that the hose could be labeled metrically but it did not specifically require that the unit of measurement be identified. In any event, the agency believes that Stratoflex's concerns about labeling are reasonable, and the final rule accordingly requires that metric labeling include the abbreviation "mm" to designate that the labeled units are metric.

The agency does not agree that this amendment permitting the use of metric-sized brake hoses will result in mismatch problems. Section 7.2.2 of Standard No. 106 currently requires at least one component of each air brake hose end fitting (except for end fittings that are atached by crimping or swaging) to be labeled with information which includes the nominal inside diameter of the hose to which the fitting is properly attached, or the outside diameter of the plastic tubing to which the fitting is properly attached. Section 9.1.2 requires at least one component of each vacuum brake hose fitting (except for end fittings that are attached by heat shrinking, interference fit with plastic vacuum hose, or crimping and swaging) to be labeled in a similar manner. These labeling requirements are not specified for hydraulic brake hose assemblies because Section 5.1 of the standard requires each hydraulic brake hose assembly to have end fittings which are permanently attached by crimping or swaging. This final rule allows the end fittings to be labeled metricaly, and the information provided on the end fittings to be expressed metrically. Since all hoses and end fittings that are assembled by mechanics will be labeled in inch or metric units, assemblers should have no difficulty in correctly matching hoses and end fittings.

Table III(a)

The agency has decided not to adopt the proposed Table III(a) in this final rule. Table III(a) specified physical dimensions for metric sizes of air brake tubing intended for use with reusable end fittings. Since the time of the proposal of Table III(a), however, the industry has moved to standardize on the size of air brake tubing labeled in metric units. Dimensional requirements for metric sized air brake tubing has been specified by the SAE in Standard J1394 (April 1983). These specifications are equivalent to those proposed in Table III(a) by NHTSA. Similarly, the International Standards Organization (ISO) has moved towards the development of specifications for metric sized air brake tubing in its draft form of TC-22-5C2-WG1-173(e). Since the industry has moved to voluntarily standardize on size of metrically labeled brake tubing, the agency has decided it is unnecessary to specify dimensional requirements for air brake tubing at this time.

Tables IV, V, VI

Table IV of Standard No. 106 specifies test cylinder radii for air brake hoses of varying diameters. Hoses must not show visible cracks as a result of exposure to various test conditions, such as low temperatures, when bent around the test cylinder. Table V lists test requirements for high and low temperature resistance, bend, and deformation tests for vacuum brake hose, specifying the test values for different sizes of hose. Table VI provides test specimen dimensions and feeler gage dimensions for the deformation test for vacuum brake hoses. Presently the sizes of brake hoses referenced in these tables are in inch size units. The amendment would provide the test values for specified sizes of metric sized brake hoses as well as for the inch size hoses.

Several commenters addressed the changes in Tables IV, V, and VI, proposed in the NPRM. Stratoflex suggested changes in the millimeter sizes referenced in Table IV and requested the table's column heading be changed to read "Nominal inside hose diameter in inches (millimeters)." The requirements of Table IV were previously specified on the basis of the inside diameter of the hose. However, in February 1974 (39 FR 7428), the agency revised the table to read "Hose, nominal diameter in inches." Since nominal diameter of traditional rubber hose refers to internal diameter and nominal diameter of tubing refers to outside diameter, the revision was made to include outside dimensions. In light of this revision, the agency does not find reasons to change this column heading as suggested by this commenter.

Stratoflex also suggested deleting references to 5, 8, 10, and 16 millimeter sizes in Table V and VI, or adding these sizes to Table III(a). This suggestion was made in order to "maintain consistency in the document." In response to this comment, the agency notes that Table III(a) was proposed for sizes of metric air brake tubing, while Tables V and VI reference metric vacuum brake hose sizes. These metric sizes represent the sizes of metric brake hoses "as manufactured," and include all the sizes of metric brake hoses currently in use. Since the metric sizes listed in the tables are not conversions but instead represent actual sizes of metric hose presently manufactured, the various metric sizes proposed in Table III(a) for air brake tubing and in Tables V and VI for vacuum brake tubing would not be identical.

The RMA commented that the metric units referenced in Tables IV and V of the NPRM imply hard conversions of the inch dimensions. The commenter stated that hard conversions have not been adopted by the industry. The agency reiterates that the metric sizes referenced in the tables were not intended to represent conversions of inch size hose, but were included in the tables for brake hose manufactured in metric sizes. The metric sizes listed in the tables represent all metric sized brake hose currently being manufactured in the international industry. By referencing these sizes in the tables, the agency intended to provide the test values for these specific sizes of metric sized brake hoses.

In order to avoid any appearance that metric values inserted in the tables constitute conversions, the agency has revised the proposed tables. Separate columns or rows are provided for inch size hoses and metric size hoses.

American Motors Corporation noted a mixture of dimensional systems in Tables I through IV, and suggested referencing the Systeme International d'Unites (SI) system for labeling brake hose at all applicable places in these tables. The agency interprets this comment to suggest using base units of the SI system in the standard. This approach would be impractical as the base unit of SI for length is the meter. NHTSA believes that the use of the derived SI unit, the millimeter, will result in a comprehensible and uniform system of measurement.

Test Requirements

Eaton commented that a 6 mm O.D. tube it tested that was coupled with a metric fitting did not meet the 50 pound tensile load requirement of S7.3.10. The commenter expressed concern whether the current performance criteria of the standard could be directly applicable to the metric sizes specified in Table III(a). The agency sees no reason why a metric size hose would not pass the same requirements as for an inch size hose of similar dimensions, and has concluded that no changes need be made to these requirements for the metric size hoses referenced in the final rule.

Eaton commented that S7.3.10 should reference "9 mm" instead of "10 mm" in paragraph 7.3.10 for the 150 pounds tensile requirement. Currently the tensile strength requirements of S7.3.10 specify that air brake hose assemblies with nominal internal diameters ⅜ inch or ½ inch must withstand a pull of 150 pounds. The agency decided against requiring a brake hose with nominal internal diameter of 9 mm to withstand a 150 pounds tensile strength requirement because a hose of this size is less than ⅜ inch in nominal internal diameter. As announced in the NPRM, in proposing this amendment allowing the use of metric-sized brake hoses, the agency did not intend to change the performance criteria applicable to a particular size of hose. Therefore, hoses with nominal internal diameters less than ⅜ inch will continue to meet the 50 pounds test of S7.3.10.

Braid Reinforcement

Eaton raised the issue of air brake tubing construction. According to that commenter, nonmetallic air brake tubing manufactured in the United States which complies with Standard No. 106 also complies with the requirements of SAE standard J844d. SAE J844d requires the use of fiber reinforcement in hose sizes ⅜ inch through ¾ inch outside diameter. Eaton expressed concern that the ISO's draft proposal for Thermoplastic Tubing for Use in Air Brake Systems does not require the use of fiber reinforcement in the larger sizes of such hose, and suggested that the metric sizes of air brake hose also be required to comply with the SAE construction parameters. This amendment to Standard No. 106 does not require fiber reinforcement for these larger sizes of air brake tubing, since this final rule is limited to the issues raised by Saab-Scandia's petition. However, if in the future it becomes apparent that construction requirements for air brake tubing should be included in Standard No. 106, then the agency will address that issue at the proper time.

Environmental Effects

The agency has reviewed this final rule under the National Environmental Policy Act of 1969 and determined that the changes will not have a significant impact on the quality of the human environment.

Economic Effects

The agency has determined that this final rule is not a "major regulation" under Executive Order 12291 or a significant regulation under the Department's Regulatory Policies and Procedures. The effects of this amendment are so insignificant that a full regulatory evaluation is not necessary. The amendment does not change any of the substantive requirements of the standard. The effect on labeling costs might be to decrease such costs slightly for manufacturers of metric brake hoses if these manufacturers now convert their hoses to English units.

The agency has reviewed this final rule under the Regulatory Flexibility Act. I certify that the changes will not have a significant economic impact on a substantial number of small entities, governmental units, or small businesses. The amendment will allow manufacturers to label brake hoses in either metric or English units. Any brake hose manufacturers that might qualify as small entities would benefit by the amendment in that labeling brake hose with only metric units is currently prohibited by the standard. Since the amendment would not impose any new cost requirements or result in significant cost impacts for manufacturers, the agency concludes that this amendment will not have a significant effect on small organizations and governmental jurisdictions. There will not be a significant impact on the cost of vehicles affected by this amendment, and accordingly small organizations or governmental jurisdictions that purchase such vehicles will not be significantly affected by this final rule.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

§ 571.106 [Amended]

In consideration of the foregoing, Standard No. 106, *Brake Hoses*, 49 CFR Part 571.106, is amended to read as set forth below.

1. S5.2.2(d) is revised to read as follows:

(d) the nominal inside diameter of the hose expressed in inches or fractions of inches, or in millimeters followed by the abbreviation "mm."

2. In Table 1, the column entitled "Hydraulic brake hose, inside diameter" is amended by revising the phrase "⅛ inch or less" to read "⅛ or 3 mm or less"; by adding the phrase "or 4 to 5 mm" after the phrase "$^{3}/_{16}$ inch"; and by revising the phrase "¼ inch or more" to read "¼ inch or 6 mm or more."

3. Table II is amended by revising the headings under the phrase "Slack, inches" to read: "⅛ inch or 3 mm hose or less"and "more than ⅛ inch or 3 mm hose."

4. S6.6.1(b) is revised to read as follows:

(b) Condition a cylinder in air at minus 40 °F for 70 hours, using a cylinder of 2½ inches diameter for test of hose less than ⅛ inch or 3 mm 3 inches for tests of ⅛ inch or 3mm hose, 3½ inches for tests of $^{3}/_{16}$ and ¼ inch hose or of 4 to 6 mm hose, and 4 inches for tests of hose greater than ¼ inch or 6 mm in diameter.

5. S7.2.1(d) is revised to read as follows:

(d) The nominal inside diameter of the hose expressed in inches or fractions of inches or in millimeters, or the nominal outside diameter of plastic tubing expressed in inches or fractions of inches or in millimeters followed by the letters OD. The abbreviation "mm" shall follow hose sizes that are expressed in millimeters. (Examples of inside diameter: ⅛, ½ (½SP in the case of ½ inch special air brake hose), 4 mm, 6 mm. Examples of outside diameter: ¼ OD, 12 mm OD.)

6. S7.2.2(d) is revised to read as follows:

(d) The nominal inside diameter of the hose to which the fitting is properly attached expressed in inches or fractions of inches or in millimeters, or the outside diameter of the plastic tubing to which the fitting is properly attached expressed in inches or fractions of inches or in millimeters followed by the letters OD (See examples in S7.2.1(d)). The abbreviations "mm" shall follow hose sizes that are expressed in millimeters.

7. Table IV is revised to read:

TABLE IV.—AIR BRAKE HOSE DIAMETERS AND TEST CYLINDER RADII

Nominal hose diameter, in.*	⅛	$^{3}/_{16}$	¼	$^{5}/_{16}$	⅜, $^{13}/_{32}$	$^{1}/_{2}$, ⅝	¾
mm.*	3	4, 5	6	8	10	12	16
Radius of test cylinder in inches	1½	2	2½	3	3½	4	4½

*These sizes are listed to provide test values for brake hoses manufactured in these sizes. They do not represent conversions.

8. S7.3.10 is amended by revising the section to read:

S7.3.10 *Tensile strength.* An air brake hose assembly (other than a coiled nylon tube assembly which meets the requirements of § 393.45 of this title) designed for use between frame and axle or between a towed and a towing vehicle shall withstand, without separation of the hose from its end fittings, a pull of 250 pounds if it is ¼ inch or less or 6 mm or less in nominal internal diameter, or a pull of 325 pounds if it is larger than ¼ inch or 6 mm in nominal internal diameter. An air brake hose assembly designed for use in any other application shall withstand, without separation of the hose from its end fitting, a pull of 50 pounds if it is ¼ inch or 6 mm or less in nominal internal diameter, 150 pounds if it is ⅜ or ½ inch or 10 mm to 12 mm in nominal internal diameter, or 325 pounds if it is larger than ½ inch or 12 mm in nominal internal diameter (S8.9).

9. S7.3.11 is amended by revising the section to read:

S7.3.11 *Water absorption and tensile strength.* After immersion in distilled water for 70 hours (S8.10), an air brake hose assembly (other than a coiled tube assembly which meets the requirements of § 393.45 of this title) designed for use between frame and axle or between a towed and a towing vehicle shall withstand without separation of the hose from its end fittings a pull of 250 pounds if it is ¼ inch or 6 mm or less in nominal internal diameter, or a pull of 325 pounds if it is larger than ¼ inch or 6 mm in nominal internal diameter. After immersion in distilled water for 70 hours (S8.10), an air brake hose assembly designed for use in any other application shall withstand without separation of the hose from its end fitting a pull of 50 pounds if it is ¼ inch or 6 mm or less in nominal internal diameter, 150 pounds if it is ⅜ inch or ½ inch or 10 to 12 mm in nominal internal diameter, or 325 pounds if it is larger than ½ inch or 12 mm in nominal internal diameter (S8.9).

10. S9.1.1(d) is revised to read as follows:

(d) The nominal inside diameter of the hose expressed in inches or fractions of inches or in millimeters, or the nominal outside diameter of plastic tubing expressed in inches or fractions of inches or in millimeters followed by the letters OD. The abbreviation "mm" shall follow hose sizes that are expressed in millimeters. (Example of inside diameter: 5/32, 1/4, 4 mm. Example of outside diameter: 1/4 OD, 12 mm OD.)

11. S9.1.2(d) is revised to read as follows:

(d) The nominal inside diameter of the hose to which the fitting is properly attached expressed in inches or fractions of inches or in millimeters, or the outside diameter of the plastic tubing to which the fitting is properly attached expressed in inches or fraction of inches or in millimeters followed by the letter OD (See examples in S9.1.1(d)). The abbreviation "mm" shall follow hose sizes that are expressed in millimeters.

12. Table V is revised to read as follows:

TABLE V.—VACUUM BRAKE HOSE TEST REQUIREMENTS

Hose inside diameter*		High temperature resistance		Low temperature resistance		Bend		Deformation—collapsed inside diameter (dimension D), inches
Inches	Millimeters	Hose length, inches	Radius of cylinder, inches	Hose length, inches	Radius of cylinder, inches	Hose length, inches	Maximum collapse of outside diameter, inches	
5/32	5	8	1 1/2	17 1/2	3	7	1 1/64	5/64
1/4	6	9	1 1/2	17 1/2	3	8	5/32	1/16
5/16		9	1 3/4	19	3 1/2	9	1 3/64	5/64
1 1/32	8	9	1 3/4	19	3 1/2	11	1 3/64	5/64
3/8	10	10	1 3/4	19	3 1/2	12	5/32	5/32
7/16		11	2	20 1/2	4	14	1 1/64	5/64
1 5/32		11	2	20 1/2	4	14	1 1/64	5/64
1/2	12	11	2	20 1/2	4	16	5/32	1/8
5/8	16	12	2 1/4	22	4 1/2	22	1/32	5/32
3/4		14	2 1/2	24	5	28	1/32	9/64
1		16	3 1/4	28 1/2	6 1/2	36	5/32	1/4

*These sizes are listed to provide test values for brake hoses manufactured in these sizes. They do not represent conversions.

13. Table VI is revised to read as follows:

TABLE VI—DIMENSIONS OF TEST SPECIMEN AND FEELER GAGE FOR DEFORMATION TEST

Hose inside diameter*		Specimen dimensions (see fig. 4)		Feeler gage dimensions	
In.	Mm.	Depth (inch)	Length (inch)	Width (inch)	Thickness (inch)
5/32	5	3/64	1	1/8	5/64
1/4	6	1/16	1	1/8	1/16
5/16		1/16	1	1/8	1/16
1 1/32	8	3/64	1	3/16	5/64
3/8	10	3/32	1	3/16	5/32
7/16		3/64	1	1/4	3/64
1 5/32		3/64	1	1/4	3/64
1/2	12	1/8	1	1/4	1/8
5/8	16	3/32	1	1/4	5/32
3/4		5/16	1	1/4	9/32
1		1/4	1	1/4	1/8

*These sizes are listed to provide test values for brake hoses manufactured in these sizes. They do not represent conversions.

(Sec. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on January 22, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85-2140 Filed 1-31-85; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 50, No. 22
Friday, February 1, 1985

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Ch. IV

[Docket No. 1660S]

Crop Insurance Regulations—Various (General Amendment—Appendix)

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule and Withdrawal of proposed rules.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the crop insurance regulations in Chapter IV of Title 7 of the Code of Federal Regulations, effective for the 1985 and succeeding crop years, to remove the "Appendix" list of counties designated for crop insurance-from all crop insurance regulations promulgated by FCIC, and to withdraw all the proposed rules updating these county listings. The intended effect of this proposed rule is to reduce the length of the documents and lower the administrative costs involved in the printing and codification of these county listings in the Federal Register and Code of Federal Regulations (CFR). The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

Comment date: Written comments, data, and opinions on this proposed rule must be submitted not later than April 2, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Room 4096, South Building, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review dates established for these regulations are made part of each regulation upon publication in the Federal Register.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

It has been the practice of FCIC, when publishing each of its regulations for insuring crops, to include an Appendix listing those counties where such crop insurance is available. The provisions requiring such publication were made part of each regulation in subsection .1 (Example: §§§ 418.012 § Availability of Wheat crop insurance).

Merritt W. Sprague, Manager, FCIC, has determined that, due to the increasing number of counties where FCIC offers crop insurance on a variety of crops, the costs of printing in the Federal Register and subsequent costs involved in codification in the Code of Federal regulations (CFR), have become excessive.

Information regarding the availability of crop insurance in any given county is presently available from FCIC service offices at the local level, making the publication of these lists unnecessary.

Because of the actions proposed above, FCIC has determined that the proposed rulemakings published in the Federal Register to update county listings are no longer necessary. Accordingly, the notice of proposed rulemakings for 7 CFR Part 411 [Amendment No. 4 to the Grape Regulations], published on Monday, July 9, 1984, at 49 FR 27949; 7 CFR Part 427 [Amendment No. 1 to the Oat Regulations], published on Thursday, June 14, 1984, at 49 FR 24522; 7 CFR Part 430 [Amendment No. 2 to the Sugar Beet Regulations], published on Thrusday, June 14, 1984, at 49 FR 24528; 7 CFR Part 434 [Amendment No. 3 to the Tobacco Dollar Regulations], published on Monday, July 2, 1984, at 49 FR 27160; 7 CFR Part 435 [Amendment No. 4 to the Tobacco Quota Regulations], published on Wednesday, June 27, 1984, at 49 FR 26238; 7 CFR Part 436 [Amendment No. 3 to the Tobacco Guaranteed Regulations], published on Monday, July 9, 1984, at 49 FR 27950; 7 CFR Part 437 [Amendment No. 3 to the Canning and Freezing Sweet Corn Regulations], published on Monday, July 9, 1984, at 49 FR 27951; 7 CFR Part 438 [Amendment No. 3 to the Canning and Processing Tomato Regulations], published on Tuesday, June 12, 1984, at 49 FR 24144; 7 CFR Part 446 [Amendment No. 1 to the Walnut Regulations], published on Monday, July 2, 1984, at 49 FR 27162; and 7 CFR Part 447 [Amendment No. 1 to the Popcorn Regulations], published on Tuesday, June 12, 1984, at 49 FR 24145 are hereby withdrawn.

FCIC is soliciting comments on this proposed rule for 60 days after publication in the Federal Register. All written comments made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Ch. IV

Crop insurance, Various crops.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to withdraw all notice of proposed rulemakings referred to herein and further proposes to amend all crop insurance regulations promulgated under such authority (7 CFR Part 400 *et seq.*), to remove the Appendix and all references to such appendix therein, effective for the 1985 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Part 400 *et seq.*, is:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Parts 402, 404, 408, 409, 410, 411, 413, 414, 415, 416, 417, 418, 419, 423, 426, 427, 429, 430, 439, 440, 441, 442, 444, 445, and 446 are amended by removing Appendix A.

3. 7 CFR Parts 402.1, 4.03.1, 404.1, 408.1, 409.1, 410.1, 411.1, 413.1, 414.1, 415.1, 416.1, 417.1, 418.1, 419.1, 423.1, 426.1, 427.1, 429.1, 430.1, 439.1, 440.1, 441.1, 444.1, 445.1, and 446.1 are revised to read as folows:

§ –.1 Availability of (name of crop) crop insurance.

Insurance shall be offered under the provisions of this subpart on (name of crop) in counties within limits prescribed by, and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

4. 7 CFR Parts 402.6, 403.6, 404.6, 408.6, 409.6, 410.6, 411.6, 413.6, 414.6, 415.6, 416.6, 417.6, 423.6, 426.6, 429.6, 430.6, 439.6, 440.6, 441.6, 442.6, 444.6, 445.6, and 446.6 are amended to read as follows:

§ –.6 The contract.

The insurance contract shall become effective upon acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the (name of crop) crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service office.

Done in Washington, D.C., on November 5, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: January 29, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85–2689 Filed 1–31–85; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 1004

[Docket No. AO–160–A62–RO3]

Milk in the Middle Atlantic Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the definitions of "plant" and "pool plant" under the Middle Atlantic order. The changes are based on evidence presented at a public hearing held in Alexandria, Virginia, on September 13, 1984. The hearing on this issue was requested by a federation of cooperatives, which represents a number of dairy farmers who supply milk to the market. The changes are needed to reflect current marketing conditions. They would allow a federation of cooperatives to qualify its reserve processing plant as a pool plant under certain circumstances and to efficiently exchange by-products by pipeline with an adjacent nonpool plant.

DATE: Comments are due on or before 15 days after publication of this decision in the **Federal Register.**

ADDRESS: Comments (five copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agriculture Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–7183.

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

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

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. Most parties who are regulated by a milk order are considered to be small businesses.

This recommended decision contains an economic analysis and takes into consideration the impact of the proposed changes in regulation on the dairy industry, including to the extent necessary, the impact of such changes on small businesses. Although this decision is not identical to a regulatory flexibility analysis, it is based on the record evidence obtained at a public hearing and therefore serves the same purpose.

Prior documents in this proceeding:

Notice of Hearing: Issued August 30, 1984; published September 6, 1984 (49 FR 35100).

Emergency Partial Final Decision: Issued October 17, 1984; published October 24, 1984 (49 FR 42737).

Order Amending Order: Issued November 6, 1984; published November 14, 1984 (49 FR 44986).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Middle Atlantic marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, by the 15th day after publication of the decision in the **Federal Register.** Five copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a

public hearing held at Alexandria, Virginia, on September 13, 1984, pursuant to a notice of hearing issued August 30, 1984 (49 FR 35100). The hearing reopened an earlier joint hearing convened on July 19, 1983 which primarily involved consideration of the expansion of the Middle Atlantic and New York-New Jersey marketing areas. That hearing record was reopened for the limited purpose of receiving additional evidence with respect to the economic and marketing conditions which relate to the computation of a producer's base and the pool qualification requirements for a reserve processing plant operated by a federation of cooperatives.

The material issues on the record of hearing relate to:

1. Computation of a producer's base.
2. Pool qualification requirements for a reserve processing plant operated by a federation of cooperatives.
3. Whether emergency marketing conditions exist to such an extent that the omission of a recommended decision and the opportunity to file written exceptions thereto are warranted.

This decision deals only with issue 2. Issues 1 and 3 were considered in a previous decision on the record.

Findings and Conclusions

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

2. *Pool qualification requirements for a reserve processing plant operated by a federation of cooperatives.* The order should be amended to permit a federation of cooperatives to qualify its reserve processing plant, which is located on the same premises with another person's nonpool plant and is connected by pipeline with such plant, as a pool plant if the pipeline is used only to move by-products.

The change was proposed by Atlantic Processing, Inc. (API), a federation of four cooperative associations. This dairy farmer organization represents a number of producers who supply milk to the market. Proponent claimed that its proposal is needed to reflect current marketing conditions and to allow the federation to operate efficiently.

API has operated a manufacturing facility at Allentown, Pennsylvania, for several years. Although the facility was considered a single operating unit, a soft-products operation (including sour cream, yogurt, condensed milk, frozen dessert mixes and cottage cheese) was conducted in one portion of the plant and hard cheeses were manufactured in another part of the same facility. The plant was a fully regulated reserve processing plant under the order. In that role, it served as a major outlet for the market's reserve milk supplies.

On April 30, 1984, API sold its hard cheese operation to Beatrice Foods, Inc. (Beatrice). Since then two legally separate businesses have been operating at the Allentown site. The land, buildings and equipment associated with the manufacture of hard cheeses are now independently owned and operated by Beatrice. The land, buildings and equipment used in connection with manufacturing soft dairy products were retained by API and continue to be owned and operated by such handler.

Following the sale of the cheese business, certain physical changes were made by the operators to divide the former plant's operations into two separate operating units. API recently installed new receiving docks at its smaller soft-products plant. With this addition, each operator (API and Beatrice) now has the capacity to receive and segregate a milk supply which is commensurate with its needs. Each business also maintains a separate utility and sewage disposal system.

The by-products resulting from the primary manufacturing operations of these two handlers complement each other. For example, to the extent that Beatrice has sufficient dryer capacity, the acid-whey associated with API's cottage cheese operation can be salvaged. Similarly, the by-products of Beatrice's hard cheese operations, whey cream and whey condensed, can be utilized in the ice cream operations conducted by API. As a convenient and economical method of exchanging these by-products, two existing pipelines have been maintained by the operators.

It is the existence of the pipelines (one for acid-whey and another for whey-cream) that is now causing a problem for API. A plant must constitute a single operating unit under the current order provisions. Because of the pipelines, the market administrator has determined that the soft-products plant of API continues to constitute only a portion of a single operating unit, which includes the operations of both API and Beatrice. Based on this interpretation, it is not possible for API to qualify such plant separately as a pool plant under the order.

API believed that the cheese business operated by Beatrice would be conducted in a separate nonpool plant and that milk delivered to such plant by the federation would have to be qualified as a diversion if it was to participate in the order's marketwide pool. In recognition of this, API asked for a hearing to consider increasing its diversion allowance to nonpool plants by 10 percentage points.

The API witness stated that the amount of increase in the diversion allowance it proposed at the hearing held in May 1984 was based on the fact that its remaining soft-products operation would qualify as a pool reserve processing plant under the order. After the close of that hearing, API learned about the market administrator's interpretation, i.e., the soft-products operation would not be considered a separate plant and thus could not qualify as a pool plant. It was then that the handler realized that all of the federation's milk delivered to Allentown (either API's soft-products operation or Beatrice's cheese-processing operation) would have to be qualified as a diversion to maintain its eligibility to share in the marketwide pool. In view of these circumstances, the federation became concerned that in the future it may be unable to keep its diversions to nonpool plants within the higher diversion allowance, which was increased at API's request and became effective on September 1, 1984.

API's witness testified that the federation considered proposing an additional increase in the diversion allowance at this hearing. This alternative was rejected, however, because proponent did not want to relax the order's pooling provisions further and thereby present an opportunity for additional milk to be associated with the market. Proponent asked instead that the order's pool plant provisions be revised in such a way that its remaining soft-products plant could qualify separately as a pool plant if certain conditions are met.

At the hearing API's witness insisted that dividing the total operations of its Allentown plant between two different operators (itself and Beatrice) should not deprive the federation from pooling its remaining smaller soft-products facility as a pool reserve processing plant under the order. He contended that API's market position could be adversely affected if it is unable to qualify its plant. He cited the following examples to support the claim. If the plant is a nonpool plant, the federation's producer milk must be associated with (either by direct receipt at or diversion from) the handler's two fluid processing pool plants at Lansdale, Pennsylvania and Baltimore, Maryland. Whereas, if the handler's soft-products plant qualifies as a pool plant, the federation's producer milk could be associated with such plant in addition to the handler's other two pool plants.

No opposition testimony to the federation's proposal was presented at the hearing. No briefs were received in connection with the issue.

A statement of counsel was made on behalf of Inter-State Milk Producers Cooperative (Inter-State), the largest cooperative supplying milk to the market. Counsel indicated that Inter-State has no objection to the federation's proposal so long as the integrity of regulation can be preserved and the revised provisions can be enforced without undue complication and expense.

A spokesman for the Ad Hoc Federal Order Committee, representing most of the major handlers operating under the Middle Atlantic and New York-New Jersey milk orders, presented a statement of position on behalf of the handlers at the hearing. He indicated that such handlers have no objection to API's proposal.

The order's provisions should be tailored to meet the changed marketing conditions which have taken place at the Allentown facility since API sold its cheese-processing business to Beatrice.

The revised provisions adopted herein will not insure pool status for proponent's smaller soft-products plant. However, they remove the impediment which now makes it impossible for API to qualify such plant as a pool plant under the order, i.e., because the plant is connected by pipeline with another person's nonpool plant located on the same premises.

The record indicates that proponent wants to maintain pool status for the milk of its producers who have been historically associated with the fluid market and whose milk is being handled at proponent's manufacturing operations at Allentown. Unless the order is amended along the lines suggested by proponent, API would have to make numerous plant and marketing adjustments in the future to accomplish this goal. Such adjustments would involve considerable expense for the federation and would result in uneconomic movements of milk products.

The record evidence also shows that API's producer deliveries to the handler's nonpool soft-products plant are now being qualified as diverted producer milk. It is expected that the recently adopted higher diversion allowance in conjunction with the federation's somewhat lower milk supplies now will allow the handler to maintain pool status for all of the milk of its producers who have been associated with this market. It should be noted in this regard that API's monthly diversion allowance and ultimately the handler's ability to qualify milk for pool status under the order is established on the basis of the amount of producer milk the federation causes to be received at or diverted from pool plants. Hence, to the extent that the handler's deliveries to its nonpool soft-products plant could be qualified as a diversion, the federation's overall pooling position in the market would be unchanged regardless of the status of its soft-products plant.

Nevertheless, even though API could maintain pool status for its current milk supplies associated with the market, affording pool status to the handler's soft-products plant if certain conditions are met will contribute to orderly marketing of producer milk under the order over the long run. In that regard, it will give the federation more flexibility in marketing its milk in particular situations.

The record indicates that proponent did not ask that the order be amended with the intention of associating additional milk and/or producers with the marketwide pool. If the handler operates its soft-products pool plant in accordance with its stated intentions, the changes provided herein should not have an adverse impact on the market positions of other interested parties covered by the order. At the same time, however, API's position in the market will be preserved, i.e., as the operator of a pool reserve processing plant.

The record shows that the pipelines connecting the two facilities will be used only to exchange the aforementioned by-products associated with the manufacturing operations of the two separate operators. This mutually beneficial arrangement whereby the residual product(s) from each handler's principal manufacturing operations can be used by the adjacent operator to produce another product would be facilitated. The efficient method presently used by the two operators in exchanging such by-products will be encouraged to continue under the order changes adopted herein.

If these operations of two separate businesses were conducted at different plant sites, tank trucks would have to be used to exchange the by-products. However, since they are situated on the same premises, it is obviously more practical and more economical to use pipelines rather than tank trucks to move such products. As a convenience to the two operators, the provisions adopted herein will accommodate the needs of the two operators in this regard, as long as the pipelines are utilized in accordance with proponent's stated intentions, i.e., exclusively to move by-products.

It seems inappropriate to deny pool status to the handler's plant simply because it is connected by pipelines with another person's nonpool plant located on the same premises under the unique circumstances where the pipelines are not used to move milk. It seems equally inappropriate to put API in the position of having to modify its physical plant structure by disconnecting the pipelines and exchanging the by-products using tank trucks merely for the purpose of meeting the requirements of the current order provisions. Accordingly, if API is able to prove to the market administrator's satisfaction that the pipelines were used only to exchange by-products during the month, its plant could be considered a separate operating unit and thus be eligible for pool status for such month.

Since the market administrator will make the final determination as to whether API's plant qualifies for pool status each month, the integrity of regulation should be protected adequately. In that regard, the market administrator would have complete authority to monitor the plant's activities which affect its pool status.

As already indicated, when API's plant qualifies as a pool plant, all milk received from producers at such plant qualifies as producer milk and is eligible for pool participation. Hence, milk that is ultimately destined for the cheese plant but is not eligible to be diverted could be received at API's pool plant simply to qualify such milk for pooling. It could then be transferred to Beatrice through the pipeline, thereby evading the effectiveness of the order's limitations on diversions to nonpool plants. As proposed, such movements would not be permitted under the revised provisions.

If the market administrator finds that during any month the pipeline was used to move milk, the reserve processing plant would not be a pool plant. The hearing notice proposal was not specific about how long the plant should be a nonpool plant in the event that such a finding was made. Milk receipts and dispositions by all pool handlers are classified and accounted for on a monthly basis under the order. The order should provide that such plant shall not be a pool plant for any month in which such a finding is made.

The same treatment (loss of pool status for the month) should apply during the months of automatic pooling (March through August). Since handlers may divert unlimited quantities of milk to nonpool plants in such months, there is no need for API to move its milk to an intermediate pool plant, because the

milk could be moved to its ultimate destination at a nonpool manufacturing plant and maintain pool status.

The hearing notice proposal of API did not specify a different treatment for moving milk to API's pool plant via the pipeline from the nonpool cheese processing plant of Beatrice. Although such movements are not likely, they are contrary to proponent's intentions, i.e., to use the pipelines only to move by-products. The same treatment under the order should be attached to milk moved in either direction via the pipelines by such operators. The provisions adopted herein carry out proponent's intent and state positively that the reserve processing plant shall be a pool plant for any month in which the handler demonstrates to the market administrator that the pipeline was used only to move by-products (not milk).

The hearing notice proposal appeared to place the burden of determining whether the API operation qualifies as a pool plant solely on the market administrator. In this particular situation, it is API that wants its plant to be considered for pool status. Such handler has the information regarding the plant's receipts and disposition. It is therefore appropriate that the primary burden of proving such plant's eligibility for pool status be placed on the handler rather than the market administrator. Accordingly, the provisions adopted herein place that responsibility on the handler operating such plant.

In connection with the market administrator's determination, the federation would be given an opportunity to prove to the satisfaction of the market administrator that, for all practical purposes, its plant was operated as a separate operation (even though it was connected by pipeline with a nonpool plant located on the same premises) with respect to its receipts and disposition of milk during the month. For that reason, it should be considered as a separate plant and be eligible for pool status. The record indicates that proponent intends to establish and maintain a record-keeping system in accordance with the market administrator's needs to facilitate the verification of milk receipts and disposition at the plant and assist in making such determination.

This decision responds to a very narrow and specific marketing problem under the Middle Atlantic order. It should be noted that a pool reserve processing plant may be operated by a cooperative as well as a federation of cooperatives in this market. However, there was no proposal to change the application of the order with respect to an individual cooperative. Also, there is no indication that such a modification is needed to meet a current or prospective marketing problem of such a handler. Accordingly, the change adopted herein is limited to the pool status of a reserve processing plant operated by a federation of cooperative associations.

In connection with the revisions in the pool plant provisions, a modification of the order's plant definition is warranted. This corollary change, in the form of an exception to such definition, provides the latitude under the order to allow a reserve processing plant operated by a federation of cooperatives to be considered for pool status as a separate plant even though it is connected by pipeline with a nonpool plant located on the same premises if the conditions specified in § 1004.7(d)(2) are met.

Rulings on Proposed Findings and Conclusions

No briefs were received.

General Findings

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

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand of milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Middle Atlantic marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1004

Milk marketing orders, Dairy products, Milk.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. Section 1004.4 is revised to read as follows:

§ 1004.4 Plant.

Except as specifically provided in § 1004.7(d)(2), "plant" means the land and buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, processing or packaging of milk or milk products (including filled milk). However, a separate facility used only for the purpose of transferring bulk milk from one tank truck to another tank truck or only as a distribution depot for fluid milk products in transit for route distribution shall not be included under this definition.

2. In § 1004.7, paragraphs (d)(2), and (e) are revised to read as follows:

§ 1004.7 Pool Plant.

* * * * *

(d) * * *

(2) A reserve processing plant operated by a federation of cooperative associations if, during the month, 30 percent or more of the producer milk of member producers of such cooperatives is caused to be delivered to and physically received at pool plants qualified pursuant to paragraph (a) of this section either from the farms of such producers or by transfer in the form of fluid milk products (except filled milk) from the plant(s) of such cooperatives. If a pipeline is maintained between a reserve processing plant and a nonpool plant operated by another person and located on the same premises, the reserve processing plant shall be a pool plant for the month if the operator of such plant proves to the satisfaction of the market administrator that such plant should be eligible for pool status on the basis of the plant's monthly receipts and disposition of milk and that the pipeline was used only to move by-products (not

milk) between such plants during the month.

* * * * *

(e) A plant that qualified as a pool plant pursuant to paragraph (b) or (d) of this section during each of the immediately preceding months of September through February shall be qualified for automatic pool plant status for each of the following months of March through August, unless the plant operator files a written request with the market administrator prior to the beginning of any such month asking that such plant not be a pool plant. Such nonpool status shall be effective on the first day of the month following the receipt of such request and shall continue until the plant again qualifies as a pool plant pursuant to paragraph (b) or (d) of this section, subject to the following conditions:

(1) The automatic pool plant status for any plant identified in paragraph (e) of this section shall be cancelled if another plant is qualified as a pool plant on the basis of deliveries to the same plants through which such automatic pooling status was acquired by the plant. Cancellation of the plant's automatic pool plant status shall be effective on the first day of the month in which the other plant is qualified as a pool plant and shall continue until the plant again qualifies as a pool plant pursuant to paragraph (b) or (d) of this section; and

(2) The automatic pool plant status of a reserve processing plant operated by a federation of cooperative associations qualified pursuant to paragraph (d)(2) of this section shall be forfeited for any month during the March through August period in which the market administrator determines on the basis of the investigation conducted pursuant to paragraph (d)(2) of this section that such plant shall not be a pool plant for the month.

* * * * *

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

Signed at Washington, D.C., on January 29, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–2703 Filed 1–31–85; 8:45 am]

BILLING CODE 3410–02–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of Proposed Rulemaking; Credit Union Service Organizations.

SUMMARY: NCUA requests comment on its regulation of Federal credit union loans to and investments in credit union service organizations (CUSO's). NCUA is considering simplification and improvment of the regulation in various respects. Among the items under consideration are (1) the elimination of inconsistencies and unnecessary procedure in determining proper activities for CUSO's and (2) the provision of guidance concerning the proper structure of CUSO's in order to minimize the risk of loss to participating credit unions and the National Credit Union Share Insurance Fund. Comments are requested on these and other matters identified below, as well as on any other issues of concern to the public with respect to CUSO's. This notice of proposed rulemaking will be followed by a final rule or a more specific proposal, as circumstances warrant.

DATE: Comments must be received on or before March 29, 1985.

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, D.C. 20456. Telephone: (202) 3547–1100.

FOR FURTHER INFORMATION CONTACT: Robert Fenner or Hattie Ulan, Department of Legal Services, at the above address, or telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION:

Overview

Section 107 of the Federal Credit Union ACt (12 U.S.C. 1757) authorizes Federal credit unions (FCU's) to invest in and make loans to credit union service organizations' subject to certain monetary limits and other restrictions discussed below. In April of 1982, NCUA substantially revised its regulation concerning the exericise of this authority. CUSO's were permitted for the first time to return profits to participating credit unions, and to provide services not only to the credit unions but to credit union members as well. In general, the effects of the 1982 revision have been very positive. Nonetheless, over two years of experience with the regulation indicates that there may be a need for additional simplification and improvment.

In particular, NCUA, is concerned that certain inconsistencies and shortcomings in the regulation have contributed to undesirable results such as conflicting interpretations, confusion among credit unions as to the proper structure and purpose of CUSO's, and, in a limited numer of cases, safety and soundness threats to individual credit unions and the National Credit Union Share Insurance Fund (NCUSIF). The purpose of this notice of proposed rulemaking is to identify and request public comment on the issues related to these concerns, with a view toward futher simplification, clarification and improvment of the regulation.

Background

In 1977, Congress granted Federal credit unions (FCU's) the authority to make loans to and invest in credit union service organizations. The lending authority (Section 107(5)(D) of the FCU Act, 12 U.S.C. 1757(5)(D)) and the investment authority (Section 107(7)(I) each allow for one percent of the FCU's paid-in and unimpaired capital and surplus to be placed in CUSO's. The two sections of the Act contain similar provisions that have the effect of defining a CUSO. Section 107(5)(D) limits FCU loans to organizations ". . . established primarily to serve the needs of [their] member credit unions, and whose business relates to the daily operations of the credit unions they serve." Section 107(7)(I) limits FCU investments to organizations ". . . providing services associated with the routine operations of credit unions." Also, Section 107(7)(I) expressly provides that the investment authority may not be used ". . . to acquire control, directly or indirectly, of another financial institution, nor [to] invest in . . . an insurance company, trade association, liquidity facility or any other similar organization. . . ." NCUA has previously considered these two sections of the FCU Act to refer to the same type of entity and has found no substantive differences between them. (See 43 FR 12402, 3/7/79).

In 1979, NCUA published a final rule implementing the authority to invest in and make loans to CUSO's (See 43 FR 12401, 3/7/79). NCUA decided at that time to maintain close controls over the authority. Among other things, the 1979 regulation limited CUSO's to the corporate form, allowed only credit unions to invest in CUSO's, listed specific functions and services that a CUSO could perform, and set out the application and approval process for FCU's forming CUSO's. In 1982, the NCUA Board significantly deregulated FCUs' involvement with CUSO's (see 47 FR 30462, 7/14/82). CUSO's were no longer limited to the corporate form, entities other than credit unions could invest in CUSO's, general categories of activities were set out rather than an exclusive list, and the application and

approval process was dropped from the regulation.

As a technical matter, it should be noted that the NCUA publication of the 1982 regulation contains an error. The first sentence of § 701.27(b) of the regulation, 12 CFR 701.27(b), should state as follows: "The purpose of a CUSO is to provide goods and services and perform functions that are associated with routine credit union operations." This is the language that was approved by the NCUA Board and published in the **Federal Register**. Unfortunately, the unofficial NCUA publications of the regulation added the word "primarily" after the words "provide" and "perform." This has caused some confusion as to what functions and services a CUSO may perform and the customer base that a CUSO may serve.

As previously indicated, NCUA believes the results of the 1982 regulation have in general been quite positive. CUSO's are now permitted to return profits to participating credit unions. CUSO's are one method by which credit unions may join together to avail themselves of services, such as data processing and accounting services, in a manner that achieves operating efficiencies and economies of scale. Also, CUSO's represent a method by which credit unions may choose to provide new financial services to their members (i.e., services other than traditional savings and consumer lending services). While the CUSO authority has not been widely utilized by FCU's (as of June 30, 1984, only 2.5% of all FCU's reported loans to or investments in CUSO's), its importance lies in part in the fact that it represents an additional choice that is available to Federal credit unions reacting to a changing financial marketplace while retaining their identity as presonalized financial cooperatives.

NCUA is concerned, however, after over two years of experience with the revised regulation, that there are certain respects in which it may be in need of further simplification and refinement. NCUA is particularly concerned that CUSO's should be structured in a manner that minimizes the risk of loss to participating Federal credit unions and to the NCUSIF. If that condition can be satisfactorily met, it would then seem desirable that participating credit unions be allowed to determine the proper scope of CUSO activities with a minimum of regulatory interference and "red tape." NCUA is also concerned that the present regulation has generated confusion, and in some instances contributed to supervisory problems, by its failure to address other issues such as insider dealing and NCUA examination authority. Altogether, there are five specific areas that NCUA wishes to obtain public comment on in its consideration of further improvement of the regulation. The five areas of concern are (1) structure and capitalization, (2) activities to be performed, (3) customer base, (4) insider dealing, and (5) examination authority. Each of these subjects is separately discussed in detail below. In addition, NCUA welcomes comment on any other issues related to its regulation of FCU loans to and investments in CUSO's.

Structure and Capitalization

The 1979 regulation limited CUSO's to the corporate form. In 1982, this restriction was removed. As a result, at least the following possibilities now exist for structuring CUSO's: general or limited partnerships, sole proprietorships, joint ventures, and corporations. Generally under the law, a corporate or limited partnership structure (assuming the FCU is not a general partner and is not involved in management or decision making) will afford protection in investing FCU's by limiting their potential loss to the amount of their investment in the CUSO. The other forms of business entities may leave an investing FCU exposed to the contract and tort liability of the CUSO. In connection with the present review of the regulation, and particularly in light of the possibility of even further expansion of the scope of permissible activities for CUSO's (discussed below), it seems appropriate to request public comment on whether FCU investments in CUSO's should be limited to those structures that effectively minimize the risk of liability and loss to participating FCU's.

It must also be noted that limiting CUSO's to certain organizational forms provides no absolute guarantee against liability on the part of investing FCU's. A solid body of case law establishes that the courts will "pierce the corporate veil" and hold one organization liable for the debts of another if equity dictates such a result. The courts have traditionally looked at a numbr of factors in making this determination. Included among the factors that may result in an adverse determination are (1) inadequate capitalization, (2) lack of separate management and control, (3) failure to observe corporate formalities, (4) similarity of corporate names and identities, and (5) shared office space and bookkeeping. This consideration raises the question of whether NCUA should provide any further quidance, by regulation or otherwise, concerning the proper structure and capitalization of CUSO's.

Another issue on which the Board seeks comment is whether it should differentiate between loans to CUSO's and investments in CUSO's in determining whether to limit the organizational form of CUSO's. The above discussion relates principally to investments in CUSO's. The concerns expressed would not be applicable in instances where an FCU simply loans money to a CUSO and does not invest in the CUSO. In those cases, the FCU would only be a creditor of the CUSO, and would be exposed only to those risks to which creditors are subject.

A question that is closely related to issues of CUSO organizational structure and potential FCU liability is the proper accounting treatment, on the credit union's books and records, of an investment in a CUSO and any other transactions with the CUSO. In its draft management letter concerning the National Credit Union Share Insurance Fund for the year ended September 30, 1984, the accounting firm of Ernst and Whinney expresses concern that credit unions may not in all cases be following generally accepted accounting principles in recording CUSO arrangements. Specific examnples cited are the improper recognition of a gain on the sale of a building to a wholly-owned CUSO and the carrying of an investment in a wholly-owned CUSO at book value despite the fact that the CUSO is losing money. The full and fair disclosure requirements of § 702.3 of NCUA's Regulations (12 CFR § 702.3) and NCUA's *Accounting Manual for Federal Credit Unions* require that FCU's follow generally accepted accounting principles in recording CUSO transactions. NCUA is considering measures to more explicitly enforce this requirement.

Activities To Be Performed

The present regulation identifies four general categories of activities that may be performed by CUSO's (see § 701.27(b) (1)–(4)) and provides that activities not within those categories may be performed with the approval of the NCUA Board (§ 701.27(b)(5)). Each of the four categories lists various examples of activities that are considered to be within the category, but the lists are not exclusive. Thus, for example, § 701.27(b)(2) authorizes "family financial services including, *but not limited to*, financial planning and counselling, including retirement counselling, estate planning and income tax preparation, developing and administering . . . personal benefit

plans, and provision of trust services . . ." (emphasis added).

The result of this regulatory structure is that a credit union or credit unions that wish to utilize a CUSO to engage in an activity that is not specifically listed may choose one of three courses of action: (i) Obtain the advice of private counsel, (ii) request an NCUA staff interpretation, or (iii) proceed under section (b)(5) to request the approval of the NCUA Board. NCUA has found this to be a process that is cumbersome and one that results in inevitable inconsistencies from case to case, depending on whether advice is obtained from a private source or NCUA. In recent months there has been a tremendous increase in the number of questions received by NCUA concerning the permissible scope of CUSO activities. Examples include discount brokeage, real estate agencies, travel agencies, marketing of consumer goods, and participation in sale and leaseback arrangements with credit unions.

NCUA would like to eliminate the inconsistencies and at the same time avoid a cumbersome review and approval process. NCUA especially questions the need for it to review or control CUSO activities *if* appropriate standards are established to minimize the risk of loss to participating credit unions and the NCUSIF. Thus, NCUA is considering deregulation of this area. The statutory standards would of course remain in effect; a CUSO's business must relate to the "daily operations of credit unions" (see Section 107(5)(D) of the Act) and the CUSO must provide services "associated with the routine operations of credit unions" (see Section 107(7)(I)). Also, at least in the case of the lending authority, the CUSO must be established "primarily to serve the needs of its member credit unions" (Section 107(5)(D)). (The Board believes this can be read to include services to credit unions *and* their members.) Aside from these limits, NCUA would not impose a "laundry list" of activities, nor would it untake a review or approval process. Thus, each individual credit union or group of participating credit unions would be allowed to determine what activities and services are related to their "daily operations" and "associated with their routine operations." For example, a large Defense FCU that has a transient membership and an active residential mortgage loan program might consider the operation (through a CUSO) of a real estate agency for its members to be associted with its routine operations. On the other hand, residential mortgages would not be within the routine operations of an FCU that serves high school and college students. Hence, the operation of a real estate agency would not be associated with their routine operations.

The NCUA Board requests comment on whether this general approach of "self-determination" by investing credit unions is a workable one for determining the permissible scope of CUSO activities. NCUA would retain the authority on a case-by-case basis, in connection with the performance of its examination and supervision functions, to question whether the activities of a particular CUSO are associated with the operations of the credit unions involved. Any decision would have implications, however, only for the case at hand, and would not have the effect of a general rule or precedent. For those commenters who believe this is a workable approach, the Board requests comment on whether and how the statutory guidelines should be incorporated into the regulation. For those who believe the approach is unworkable, the Board requests both comments on why it is unworkable and specific recommendations as to alternative approaches.

Customer Base

Although the FCU Act mandates that CUSO's provide services and perform functions that are associated with routine credit union operations, the issue of who the CUSO may serve is not addressed. The 1979 regulation allowed CUSO's to serve credit unions investing in it and other entities to a limited extent. The current regulation does not specify who the CUSO may serve. The preamble to the current regulation stated that a CUSO could serve organizations other than credit unions as long as its primary purpose was to serve credit unions. (See 47 FR 30462, 7/14/82). The only statutory limit that seems clearly directed at this issue is the provision in the lending authority (Section 107(5)(D)) which, as mentioned above, requires that the organization be "established primarily to serve the needs of its member credit unions."

NCUA requests comment on whether the regulation should provide clarification with respect to the appropriate customer base for CUSO's. Various options exist. CUSO's could be limited to serving credit unions and other participating institutions and their members or customers. They could be allowed to serve credit union members generally, irrespective of whether a particular credit union is a lender or investor in the CUSO. Or they could be allowed to provide "incidental" services to members of the public so long as the primary purpose is to serve credit union members and customers of other participating institutions. NCUA requests comment on whether the regulation should address this subject, and if so, how.

Insider Dealing

The current rule does not contain a prohibition on insider dealing involving CUSO's, although the preamble to the final rule contained a discussion of the issue. The preamble stated that FCU officials and employees could receive compensation for services rendered to the CUSO, but that compensation that was tied to the volume of CUSO business generated by the official's or employee's credit union (e.g., personal receipt of insurance commission income) may be viewed as a misappropriation of the credit union's corporate opportunity (see 47 FR 30463, 7/14/82). While NCUA continues to hold this position, there are at least two reasons for questioning whether express regulatory guidance on this subject might now be more appropriate. First, the decision not to regulate was based at least in part on the notion that isolated problems could be addressed by NCUA as "unsafe and unsound practices" using the Agency's statutory enforcement powers. Recent court decisions interpreting comparable powers of the other financial regulators have, however, severely restricted the utility of this approach by holding that a practice is unsafe and unsound only if it actually threatens the financial viability of the institution. (See, *Gulf Federal Savings and Loan Association* v. *FHLBB*, 651 F.2d 259 (5th Cir. 1981).) Second, NCUA has encountered a limited number of cases where insider dealings in CUSO's have reduced the profitability of the CUSO to the credit union and its members, and ultimately contributed to supervisory problems or insolvency of the credit union. For example, in one recent case, the two top management officials of a Federal credit union become involved in the formation of a CUSO to which the credit union members' real estate and insurance business was directed when the members received loans from the credit union. The officials personally received the commission income for this business, thus reducing the profitability of the CUSO to the credit union and increasing the costs of the services to the members. Further, the evidence indicates that the desire to generate this commission income at the very least "clouded" credit decisions that were made by the credit union, which ultimately contributed to the insolvency of the credit union and resulted in

substantial expense to the NCUSIF. An express regulatory prohibition might prevent this type of problem from recurring, and at the same time it would place no burden whatsoever on the vast majority of credit unions and credit union officials who scrupulously avoid this sort of conflict of interest.

Accordingly, NCUA requests comment on whether it should provide express regulatory protection against credit union officials and employees receiving commission income and engaging in other types of insider dealing in connection with CUSO activities. If so, should that protection take the form of broad prohibition, or are there certain types of insider relationships that should be permitted on the condition that full public disclosure is made?

Examination Authority

Under the current regulation, NCUA maintains examination authority over CUSO's only "to the extent permitted by law." Thus, whether NCUA has the authority to conduct an examination of a CUSO presumably depends on the laws of the state under which the CUSO is chartered. NCUA has neither the resources nor a reason to examine CUSO's on a routine basis. In view of the tendency for problems in CUSO's to coincide with or lead to problems in participating credit unions, however, NCUA questions whether it should take a stronger stand with respect to its ability to examine CUSO's. Such a stand may be appropriate in view of the fact that any risk of loss to participating Federal credit unions is ultimately borne in part by all insured credit unions through the NCUSIF. As an example of one possible method of addressing this issue, the Federal Home Loan Bank Board, in its regulation concerning savings and loan service corporations, requires that the corporations agree in writing to permit and pay the cost of such examinations as the Board deems necessary (see 12 CFR 545.74(b)(iii)). NCUA requests comment on whether it should adopt this or a similar method of establishing a clear authority to examine CUSO's where circumstances warrant.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that any proposed change to the regulation, if adopted, will not have a significant economic impact on a substantial number of small credit unions. First, small credit unions generally have not been involved to a significant degree in the formation and operation of CUSO's. Second, the proposed changes are generally directed at clarification and reduction of regulatory confusion and interpretive burdens, rather than creation of new regulatory restrictions. Therefore, a regulatory flexibility analysis is not required.

Financial Regulation Simplification Act

Since the proposed rule would reduce burdens and delay would cause unnecessary continuance of such burdens, the NCUA Board finds that full and separate consideration of all of the requirements of the Financial Regulation Simplification Act is impractical. The NCUA Board has, however, addressed most of these policies, as set forth above.

List of Subjects in 12 CFR Part 701

Credit unions, Credit union service organizations.

Authority: 12 U.S.C. 1757, 12 U.S.C. 1766, 12 U.S.C. 1784.

Dated: January 24, 1985.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85-2637 Filed 1-31-85; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-145-84]

Income Taxes; Limitation on Amount of Depreciation and Investment Tax Credit for Luxury Automobiles; Limitation When Certain Property Is Used for Personal Purposes; Cancellation of Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the limitation on amount of depreciation and investment tax credit for luxury automobiles, and the limitation when certain property is used for personal purposes.

DATE: The public hearing was originally scheduled for February 5, 1985.

FOR FURTHER INFORMATION CONTACT: Cynthia Grigsby of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224. Telephone 202-566-3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: By a notice appearing in the **Federal Register** for Thursday, December 13, 1984 (49 FR 48573), it was announced that a public hearing on the proposed regulations relating to the limitation on amount of depreciation and investment tax credit for luxury automobiles, and the limitation when certain property is used for personal purposes would be held on February 5, 1985, at 10:00 a.m. in the Internal Revenue Service Auditorium, 1111 Constitution Avenue NW., Washington, D.C. The proposed regulations that were to be the subject of that hearing had been published in the **Federal Register** for Wednesday, October 24, 1984 (49 FR 42743).

The public hearing scheduled for February 5, 1985, has been cancelled. The proposed regulations that were announced in 49 FR 42743, including any amendments thereto, will be the subject of a hearing to be scheduled at a later date. The date and time of the hearing will be announced in the **Federal Register**.

Peter K. Scott,

Acting Director, Legislation and Regulations Division.

[FR Doc. 85-2718 Filed 1-31-85; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[LR-35-81]

Transfers of Oil and Gas Properties by Individuals to Corporations; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the eligibility of percentage depletion on qualified oil or gas property transferred by an individual to a qualified transferee corporation.

DATES: The public hearing will be held on Friday, March 15, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Friday, March 1, 1985.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The request to speak and outlines of oral comments should be submitted to the Commissioner of

Internal Revenue, Attn: CC:LR:T (LR–35–81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 613A(c)(10) of the Internal Revenue Code. The proposed regulations appeared in the **Federal Register** for Wednesday, October 3, 1984 (49 FR 39078).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, March 1, 1985, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85–2717 Filed 1–31–85; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[LR–83–83]

Exclusion From Gross Income for Certain Foster Care Payments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the exclusion from gross income for certain foster care payments. Changes to the applicable tax law were made by the Act of January 14, 1983. The regulations would provide the public with the guidance needed to comply with that Act and would affect states, political subdivisions of states, and child-placing agencies making foster care payments, and foster parents receiving foster care payments.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 2, 1985. The amendments are proposed to be effective for taxable years beginning after December 31, 1978.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–83–83), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Clark of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3288, not a toll-free call).

SUPPLEMENTARY INFORMATION: .

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 131 of the Internal Revenue Code of 1954 (Code). These amendments are proposed to conform the regulations to section 102 of the Act of January 14, 1983 (96 Stat. 2606) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Section 131 of the Code provides that foster parents may exclude from gross income amounts received during the taxable year as qualified foster care payments. Qualified foster care payments include amounts paid by a state or political subdivision of a state or by certain child-placing agencies to reimburse foster parents for the expense of caring for a qualified foster child in their home. The regulations illustrate that amounts paid in excess of the expense of caring for a qualified foster child (other than difficulty of care payments) and amounts paid for keeping emergency shelter available are not excludable from gross income under section 131.

Qualified foster care payments also include amounts paid by a state or a political subdivision of a state or certain child-placing agencies as difficulty of care payments. A difficulty of care payment is any amount (other than an amount paid to reimburse foster parents for the expense of caring for a qualified foster child) that is paid as compensation for providing the additional care of a qualified foster child that is required because of the child's physical, mental, or emotional handicap, and that is provided in the home of the foster parents. Amounts are treated as difficulty of care payments only if a state or poliltical subdivision of a state (or an agency thereof) has determined that there is a need for additional compensation because of the additional care required by reason of the child's handicap, and only if the amounts are designated by the payor as difficulty of care payments. The regulations provide that the payor may make the designation by means of a statement sent to the foster parents or a separate check issued under a program to provide difficulty of care payments.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Special Analyses

The Commissioner of Internal Revenue Service has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no

Regulatory Flexibility Analysis is required for this rule.

Drafting Information

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

List of Subjects in 26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed Amendments to the Regulations

PART 1—[AMENDED]

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph. The following new section is added in the appropriate place.

§ 1.131–1 Certain foster care payments.

(a) *Exclusion from gross income*—(1) *In general.* Gross income shall not include amounts received by a foster parent during the taxable year as qualified foster care payments.

(2) *Qualified foster care payment.* The term "qualified foster care payment" means any amount that is paid by a state or political subdivision thereof or by a child-placing agency described in section 501(c)(3) and exempt from tax under section 501(a) and—

(i) That is paid to reimburse the foster parent for the expenses of caring for a qualified foster child in the foster parent's home, or

(ii) That is a difficulty of care payment, as defined in section 131(c) and paragraph (c) of this section.

(3) *Limitation on exclusion of difficulty of care payments.* In the case of any foster home, difficulty of care payments for any period to which such payments relate shall not be excludable from gross income under section 131(a) and paragraph (a)(1) of this section to the extent such payments are made for more than 10 qualified foster children. If difficulty of care payments for any period are made for more than 10 qualified foster children and any of the children was not in the foster home for the entire period to which the payments relate, the exclusion shall apply to the payments for the 10 children who were in the foster home for the greatest number of days during the period.

(b) *Qualified foster child.* For the purposes of this section, the term "qualified foster child" means any individual who—

(1) Has not attained age 19, and

(2) Is living in a foster family home in which the individual was placed by an agency of a state or political subdivision thereof, or an organization that is licensed by a state (or political subdivision thereof) as a child-placing agency and that is described in section 501(c)(3) and exempt from tax under section 501(a).

(c) *Difficulty of care payments*—(1) *In general.* For purposes of this section, the term "difficulty of care payments" means payments to individuals that are not described in paragraph (a)(2)(i) of this section and that are compensation (and designated as such under paragraph (c)(2) of this section) for providing the additional care of a qualified foster child that is—

(i) Required by reason of a physical, mental, or emotional handicap of the child with respect to which a state or a political subdivision of a state (or an agency thereof, but not a licensed private agency) has determined that there is a need for additional compensation, and

(ii) Provided in the home of the foster parent.

(2) *Payor designation.* Payments will be treated as difficulty of care payments only if they are designated by the payor as compensation described in paragraph (c)(1) of this section. The designation may be made by means of a written statement furnished to the foster parents on or before January 31 of the year following the calendar year in which such payments are made (or, in the case of payments made before January 1, 1985, on or before the last date on which the foster parents may file a claim for credit or refund of income tax with respect to such payments). The statement need not use the words "difficulty of care payments," but must indicate that the payment is for care that has been determined by a state or political subdivision of a state to be required by reason of a physical, mental, or emotional handicap of a qualified foster child, and that is provided in the home of the foster parents. In lieu of a written statement, the designation may be made by means of a separate check, issued under a program to compensate foster parents for providing, in their homes, the additional care determined by a state or political subdivision of a state (or an agency thereof, but not a licensed private agency) to be required by reason of the physical, mental, or emotional handicap of their foster child.

(d) *Examples.* The provisions of paragraphs (a) through (c) of this section may be illustrated by the following examples:

Example (1). A married couple provide foster care to a ten-year-old child who has been placed in their home by a licensed private child-placing agency described in section 501(c)(3) and exempt from tax under section 501(a). The child-placing agency makes a specified payment at the end of the month as reimbursement for amounts expended by the foster parents in providing food, shelter, school supplies, and other items of support for the child during the preceding month. The foster parents report to the child-placing agency the amounts paid or incurred for clothing and medical expenses, and the agency makes direct payment to the vendor or physician (if the goods or services were supplied on credit) or increases the monthly check to the foster parents if they have expended their own funds. The payments made by the child-placing agency to the foster parents are solely for the purpose of reimbursing them for their expenses incurred in taking care of the child placed in their home, and such payments do not exceed the expenses incurred. Accordingly, the payments are excluded from the gross income of the foster parents.

Example (2). A married couple entered into an agreement with a licensed private child-placing agency described in section 501(c)(3) and exempt from tax under section 501(a) to provide foster care for a ten-year-old child in their home. They provide the child with room, board, clothing, medical and dental care, insurance, school expenses, recreation items, transportation, and spending money. The child-placing agency makes monthly payments to the foster parents covering (1) compensation for the services of the foster parents and (2) a per-child support payment that varies with the age of the child. The total amount received exceeds the expenses incurred in caring for the foster child. The portion of each payment that represents reimbursement or advancement for expenses subsequently incurred by the foster parents and does not exceed the expenses incurred is not includible in their gross income. The remaining portion of each payment is includible in gross income.

Example (3). A department of public welfare of a state administers an emergency shelter care program under which children in physical or moral danger are placed in the homes of temporary foster parents where they remain for periods of not more than 30 days before being placed in permanent foster homes. Foster parents who provide emergency shelter care must have adequate house space, be physically fit, and have suitable personalities. To assure the availability of suitable homes for such care, the welfare department is authorized to pay a monthly subsidy ranging from 20 dollars to 40 dollars a bed, totaling 100 dollars to 200 dollars a month, depending on the locality. Foster parents who participate in this program are paid these amounts for making the emergency shelter care available, and payment is not dependent upon a child being currently in the home. The payments are remuneration for keeping space available, not payments to reimburse the foster parents for

the expenses of caring for qualified foster children. Accordingly, the payments are includible in gross income.

Example (4). The welfare department of a county conducts a specialized foster-family-care program to place physically, mentally, or emotionally handicapped foster children in the homes of foster parents who, by reason of their training or work experience, are qualified to provide the children with the special care they need. Before a child is placed with the foster parents, a service worker employed by the welfare department must determine that the child has a physical, mental, or emotional problem requiring special care. The service worker's determination must be supported by the judgment of an appropriately qualified professional or the worker's supervisor. The child's record must document the physical, mental, or emotional problem that requires special care, and the special care to be paid for must be designated in the child's service plan. Payments for the special care required by the child's handicap are in addition to, and are made under the specialized foster-family-care program separately from, payments for basic room, board, and supervision. In these circumstances, an agency of a political subdivision of a state has determined that additional compensation should be paid to foster parents for the additional care they provide their handicapped foster children, and the payor has designated the additional compensation as compensation described in paragraph (c)(1) of this section. Accordingly, the payments for the special care are excludable from the gross income of the foster parents subject to the limitation in paragraph (a)(3) of this section.

Example (5). A county department of public welfare makes difficulty of care payments on the fifteenth of each month for handicapped foster children cared for in the prior month. The payments are adequately designated as difficulty of care payments. A husband and wife have been providing care in their home for 10 handicapped foster children. During the last week of May, they take one more handicapped child into their home. On June 15, the welfare department makes a difficulty of care payment for the 11 children cared for in May. The foster parents may exclude from their gross income only the portion of the payment representing compensation for the additional care provided for the 10 children who were in their home for the entire month of May.

(e) *Effective date.* The provisions of this section apply to amounts received by foster parents during taxable years beginning after December 31, 1978.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-2718 Filed 1-31-85; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Surface Coal Mining and Reclamation Operations Under Federal Program for Tennessee; Petition for Rulemaking

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Request for public comment on a petition for rulemaking.

SUMMARY: On December 5, 1984, OSM received a petition for rulemaking from Save Our Cumberland Mountains and other citizen organizations requesting that OSM amend 30 CFR Part 942 to conform the Tennessee Federal program with the July 6 and October 1, 1984 decisions in *In Re: Permanent Surface Mining Regulation Litigation (II).* The petition was submitted pursuant to section 201(g) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and 30 CFR 700.12. OSM seeks public comment on whether the changes requested in the petition should be granted in whole or part.

DATE: Written comments received later than 5 p.m. March 4, 1985 will not necessarily be considered in the Director's decision on whether to grant the petition in whole or in part.

ADDRESSES: *Written comments: Hand-deliver* to: Office of Surface Mining, Administrative Record (942), Room 5124, 1100 L Street NW., Washington, D.C.; or *mail* to: Office of Surface Mining, Administrative Record (942), Room 5124L, 1951 Constitution Avenue NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Murray Newton, Chief, Branch of Regulatory Programs, Office of Surface Mining, Department of the Interior, 1951 Constitution Avenue NW., Washington, D.C. 20240; 202-343-5866.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the petition, the Tennessee Federal program, and the court decisions referenced in this notice are available for inspection at the OSM Administrative Record address listed above under "**ADDRESSES**". The text of the petition is also reprinted as an Appendix to this notice.

Public Comment Period

The comment period on the petition will extend until the date listed above. Written comments should be specific, pertain only to the issues discussed in this notice, and provide reasons for any recommendations. OSM cannot ensure consideration of comments received after the comment period ends or those delivered to an address other than that specified above.

Public Meetings

No public hearing is being set. However, OSM staff will be available to meet with the public during business hours, 8:00 a.m. to 4:00 p.m., until the close of the comment period. In order to arrange for a meeting, please contact the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

II. Background

On October 1, 1984, OSM promulgated a final rule implementing a Federal program for regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within the State of Tennesses (49 FR 38874). The Tennessee program, like all Federal programs, is based on the Secretary of the Interior's permanent program regulations in 30 CFR Subchapters A, F, G, H, J, K, L, and M. Federal programs are promulgated by means of cross-referencing the permanent program rules, and by modifying or adding provisions as appropriate to take into consideration relevant conditions in a particular State.

On March 13, 1979, OSM published regulations implementing the permanent regulatory program of Title V of the Act, 44 FR 14902 *et seq.* A number of these regulations were challenged by States, coal industry representatives and citizen and environmental groups. *In Re: Permanent Surface Mining Regulation Litigation,* No. 79-1144 (D.D.C. 1980) (*In Re: Permanent (I)*). The District Court issued a decision in February 1980 and another in May 1980. The parties appealed portions of the District Court's decisions in *In Re: Permanent (I)* but the D.C. Circuit Court remanded the case on motion of the parties pending the outcome of OSM's program of regulatory reform. *In Re: Permanent (I),* Order, February 1, 1983 (D.C. Cir.).

Many of the regulations originally promulgated in 1979 were repromulgated during 1983 as part of OSM's extensive program of regulatory reform. Citizen and environmental groups as well as States and industry representatives again challenged some of these new regulations in *In Re: Permanent Surface Mining Regulation Litigation (II),* No. 79-1144 (D.D.C. 1984) (*In Re: Permanent (II)*). In that case, the court divided its consideration of the challenged

regulations into four rounds of briefing and oral argument. Judge Flannery issued his Round I and II decisions on July 6, 1984, and October 1, 1984, respectively; he remanded a number of regulations to the Secretary for revision in accordance with those decisions. (*See* July 6, 1984 Memorandum Opinion and Order, and October 1, 1984 Mem. Op.). OSM has separately prepared and expects to publish shortly in the **Federal Register** a notice of suspension to comply with the court's orders (July 6, 1984 Order, August 30, 1984 Amended Judgement and Order, and December 10, 1984 Amended Judgment and Order). The suspension notice will apply to the permanent program rules and, therefore, unless otherwise specified, to Federal programs which cross-reference those rules.

III. Petition for Rulemaking

On December 5, 1984, OSM received a petition for rulemaking from Save Our Cumberland Mountains, Tennessee Citizens for Wilderness Planning, The Sierra Club, The Legal Environmental Assistance Foundation, and the Environmental Policy Institute. The petition was submitted pursuant to section 201(g) of the Act, which provides that any person may petition for a change in OSM's regulations. The Act allows for a period of 90 days for the Director to decide whether to grant or deny a petition. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12(c), the Director must first determine whether the petition has a reasonable basis. If it has, notice is to be published in the **Federal Register** seeking comments on the petition. The Director has determined that portions of the petition for amendment of 30 CFR Part 942 have a sufficiently reasonable basis that OSM should seek comments. The text of the petition appears as an appendix to this notice.

This notice seeks public comments on the petitioners' requests. At the close of the comment period, a decision will be made whether to grant or deny the petition. To the extent the decision is to grant part or all of the petition, rulemaking proceedings will be initiated where appropriate relief is not otherwise provided. For any aspects in which rulemaking proceedings are appropriate, public comment will again be sought before a final rulemaking notice appears. To the extent the decision is to deny part or all of the petition, no further rulemaking action will occur, but the petitioners will be notified in writing of the Director's decision.

By letter dated November 30, 1984, the petitioners submitted a petition to amend 30 CFR Part 942, the Tennessee Federal Program, alleging that such amendments were necessary to conform OSM's regulations with Judge Flannery's Round I and II decisions in *In Re: Permanent (II)*. The petitioners requested that the proposed amendments be made effective immediately as emergency rules with comment allowed after the rules go into effect, and that a public hearing be held after implementation of the amendments as emergency rules. The petitioners contend that failure to implement the rules immediately will create an imminent danger to the health or safety of the public, and/or would cause or can reasonably be expected to cause significant, imminent environmental harm.

Listed below is a summary description of each requested amendment and OSM's preliminary views as to whether that portion of the petition should be granted. The suspension notice to be published in the near future will address many of the petitioners' concerns.

Requested Amendments

1. Amend 30 CFR 942.800 by Adding the Requirement To File a Bond Found at 30 CFR 800.11(b), Revised as of July 1, 1982

Although petitioners did not state any specific basis for this request, the requested amendment appears to be directed to Judge Flannery's ruling that incremental bonding, allowed by 30 CFR 800.11(b), is contrary to section 509 of SMCRA. OSM is disposed to grant the substance of the request by means of the suspension notice, which will suspend 30 CFR 800.11(b) insofar as it allows the first bond increment to cover an area smaller than the entire area within the permit area upon which surface coal mining and reclamation operations will be conducted during the initial permit term. The suspension would accomplish the petitioners' objective without the need to reinstate an earlier regulation.

2. Amend 30 CFR 942.800 Concerning Period of Performance Bond Liability, by Removing Subsection (a)(2) in its Entirety

There is no subsection (a)(2) of 30 CFR 943.800. Petitioners' request appears to be directed to Judge Flannery's ruling that 30 CFR 800.13(a)(2), allowing phase bonding, is contrary to section 509 of SMCRA. OSM is disposed to grant this portion of the petition by means of the suspension notice, which will suspend 30 CFR 800.13(a)(2).

3. Amend 30 CFR 942.816(a) by Inserting Provisions for Protection of Endangered and Threatened Species as Set Forth in 30 CFR 816.97(a) and (b) Revised as of July 1, 1982

Section 816.97(a) Judge Flannery remanded 30 CFR 816.97(a) with instructions for OSM to add to it the provision contained in previous § 816.97(d)(3) requiring operators, to the extent possible using the best technology currently available, to fence, cover or use other appropriate methods to exclude wildlife from toxic ponds. Petitioners have requested that provisions contained in 30 CFR 816.97(a) on July 1, 1982, be added to the Tennessee program. However, Section 816.97(a) of the 1982 rule did not contain the toxic pond requirement; it was contained in § 816.97(d)(3) (July 1, 1982), which was deleted on June 1, 1983 (48 FR 24652). OSM is disposed to deny this portion of the petition on the basis that there is no need to adopt a provision applicable only to Tennessee because OSM will be proposing national regulations protecting wildlife from toxic ponds which will also apply to the Tennessee program.

Section 816.97(b) Judge Flannery also remanded 30 CFR 816.97(b) concerning protection of endangered and threatened species because the regulation would allow mining operations to take place that would be likely, but not certain, to jeopardize endangered species and their critical habitats. Judge Flannery found that the regulation violates section 7(a)(2) of the Endangered Species Act. Judge Flannery also remanded the regulation because it eliminated a requirement, contained in the previous regulation, to consider State-listed endangered species in addition to those listed by the Secretary. OSM is disposed to deny this portion of the petition on the basis that OSM will be proposing national regulations to provide the requested relief which will also apply to the Tennessee program.

4. Amend 30 CFR 942.816(e), Backfilling and Grading, To Provide That cut-and-fill Terraces, 30 CFR 816.102(g), is Deleted in its Entirety

Judge Flannery remanded 30 CFR 816.102(g) for failure to provide adequate national standards and guidelines. Contrary to the implication of the petitioners' request, terracing is not prohibited by the approximate original contour (AOC) requirement of section 515(b)(3) of SMCRA. The definition of AOC in section 701(2) of the Act specifically recognizes that terracing may be part of AOC. However, OSM is

disposed to grant this portion of the petition in part by proposing new backfilling and grading regulations specifically applicable to Tennessee to comply with the court's order.

5. Amend 30 CFR 942.816(e), Backfilling and Grading, To Include the Definition of Thin Overburden Set Forth in 30 CFR 816.104(a), Revised as of July 1, 1982

Judge Flannery remanded 30 CFR 816.104(a) for failure to provide adequate national standards and guidelines. OSM is disposed to grant this portion of the petition in part by proposing new backfilling and grading regulations for Tennessee to comply with the court's order if it can be demonstrated that there is a need for such a rule in Tennessee. The physical features in Tennessee are such that it is unlikely that volumes of overburden will be insufficient to achieve AOC (except in remining situations where special rules apply).

6. Amend 30 CFR 942.816(e), Backfilling and Grading, To Include the Definition of Thick Overburden as set Forth in 30 CFR 816.105(a), Revised as of July 1, 1982

Judge Flannery remanded 30 CFR 816.105(a) for failure to provide adequate national standards and guidelines. OSM is disposed to grant this portion of the petition in part by proposing new backfilling and grading regulations specifically applicable to Tennessee to comply with the court's order.

7. Amend 30 CFR 942.817 by Providing That the Following Phrase: "to the Extent Required Under State Law" in 30 CFR 817.121(c)(2) Shall Not Apply

Judge Flannery remanded 30 CFR 817.121(c)(2) because he found that OSM did not provide adequate notice or opportunity to comment on the substance of the rule, in violation of the Administrative Procedue Act (APA), 5 U.S.C. 553. The regulation requires operators to redress material damage to surface structures or facilities only to the extent required under State law. OSM is disposed to deny this portion of the petition because, in promulgating the Tennessee Federal program subsequent to the adoption of § 817.121(c)(2), OSM provided sufficient notice and comment to apply the rule in Tennessee.

8. Amend 30 CFR 942.816(g), Roads, to Adopt the regulations Set Forth in 30 CFR 816.150–816.156, 816.160–816.166, and 816.170–816.176 Revised as of July 1, 1982

Judge Flannery remanded 30 CFR 816.150 because OSM did not provide proper notice and opportunity for comment on the substance of the final rule which was adopted, in violation of the APA. OSM is disposed to deny this portion of the petition on the basis that the road regulations applicable in Tennessee were the subject of proper APA notice and comment in promulgating the Tennessee Federal program. Moreover, in response to public comments the road regulations in the Tennessee program are not the mirror image of the Federal rules; additional provisions were adopted.

9. Amend 30 CFR 942.817(f), Roads, to Adopt the regulations Set Forth in 30 CFR 817.150–817.156, 817.160–817.166, and 817.170–817.176 Revised as of July 1, 1982

Judge Flannery remanded 30 CFR 817.150 because OSM did not provide proper notice and opportunity for comment on the substance of the final rule which was adopted, in violation of the APA. OSM is disposed to deny this portion of the petition on the basis that the road regulations were the subject of proper notice and comment in promulgating the Tennessee program. Moreover, the road regulations in the Tennessee program are not the mirror image of the Federal rules; additional provisions were adopted.

10. Amend 30 CFR 942.823, Prime farmland, To Delete the Requirement of 30 CFR 823.11 (a) and (b)

Section 823.11(a) Judge Flannery remanded 30 CFR 823.11(a) because he found the rule improperly extended an exemption from prime farmland performance standards to surface facilities, actively used over an extended period of time but which affect a minimal amount of land, associated with both surface and underground mining operations. Judge Flannery found that the rule contradicted his 1980 decision that such an exemption was reasonable only for underground mining operations. Furthermore, the court found that OSM must provide guidelines for States as to what constitutes "an extended period of time" or "a minimal amount of land."

OSM is disposed to grant this portion of the petition by means of the suspension notice which will suspend 30 CFR 823.11(a) insofar as it excludes preparation plants, support facilities and roads of surface mining operations from the requirements of Part 823 and by proposing a change to 30 CFR Part 823 to specify guidance for both "an extended period of time" and a "minimal amount of land."

Section 823.11(b) Judge Flannery remanded OSM's rule allowing water bodies on prime farmland as contrary to the Act's requirements that prime farmland be returned to cropland after mining (Section 510(d)(1)). OSM is disposed to grant this portion of the petition by means of the suspension notice which will suspend 30 CFR 823.11(b).

11. Amend 30 CFR Part 942 to Add All of the Provisions Governing Mining on Federal Lands as Set Forth in 30 CFR Parts 740, 741, 742, 743 and 744 Revised as of July 1, 1982

Judge Flannery remanded the Federal lands rules involving a delegation to the States of authority to approve "mining plans" on Federal lands, as contrary to section 523(c) of SMCRA. It is not clear what the petitioners seek in this part of their petition. OSM is disposed to deny this portion of the petition on the basis that Judge Flannary's ruling does not impact Federal program States because no delegation of authority is involved. Furthermore, the Federal lands rules apply to Tennessee regardless of which entity is the regulatory authority (30 CFR 740.11), and thus it is unnecessary to include them in a Federal program.

12. Amend 30 CFR 942.701(a) To Replace the Definition of "Coal Preparation Plant" and "Coal Preparation or Coal Processing" With the Definition of "Coal Processing Plant" as Set Forth in 30 CFR 701.5 Revised as of July 1, 1982

In the final rule promulgating a Federal program for Tennessee, OSM addressed this issue, in response to Judge Flannery's July 6, 1984 decision, by providing in § 942.701(a)(3) that the definitions of "surface coal mining operations" in § 700.5, and "coal preparation or coal processing" and "coal preparation plant" in § 701.5 shall include facilities which leach, chemically process, or physically process coal. (49 FR 38891, 38893, October 1, 1984). OSM is therefore disposed to deny this portion of the petition on the basis that the Tennessee program already reflects the court's decision on this jurisdictional issue.

13. Amend 30 CFR 942.779 To Reinstate the Regulations for Fish and Wildlife Resources Information set forth in 30 CFR 779.20 as Adopted on March 13, 1979

Judge Flannery ordered OSM to reinstate the 1979 rules concerning permit application requirements for fish and wildlife information, until OSM completes a new rulemaking to consider these requirements. OSM is disposed to grant this portion of the petition by means of the suspension notice which

will reinstate both 30 CFR 779.20 and the corresponding underground mining requirement at 30 CFR 783.20.

14. Amend 30 CFR 942.780 To Reinstate the Regulations for Fish and Wildlife Plans set forth in 30 CFR 780.16 as Adopted on March 13, 1979

Judge Flannery ordered OSM to reinstate the 1979 rules concerning permit application requirements for fish and wildlife plans until OSM completes a new rulemaking to consider these requirements. OSM is disposed to grant this portion of the petition by means of the suspension notice which will reinstate both 30 CFR 780.16 and the corresponding underground mining requirement at 30 CFR 784.21.

The full text of the petition, including a statement of the petitioners' reasons for granting the petition, is reprinted as an Appendix to this notice. OSM now seeks public comment on the petitioners' suggested changes and OSM's preliminary views regarding granting or denying the various aspects of the petition.

List of Subjects in 30 CFR Part 942

Coal mining, Intergovernmental relations, Surface mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Dated: January 25, 1985.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspection, Office of Surface Mining.

Appendix

The text of the petition dated November 30, 1984, from Save Our Cumberland Mountains, Tennessee Citizens for Wilderness Planning, The Sierra Club, The Legal Environmental Assistance Foundation and The Environmental Policy Institute is as follows:

Pursuant to the Administrative Procedure Act 5 U.S.C. 553(e), the Surface Mining Control and Reclamation Act of 1977 (hereinafter the "Act"), 30 U.S.C. 1211(c)(2) and (g) and regulations of the Office of Surface Mining (hereinafter "OSM"), 30 U.S.C. 700.12, Save Our Cumberland Mountains, Tennessee Citizens for Wilderness Planning, the Sierra Club, the Tennessee Chapter of the Sierra Club, the Legal Environmental Assistance Foundation, and the Enviornmental Policy Institute petition the Director, OSM, for certain amendments to regulations found at 30 CFR Part 942, as published at 49 FR 38874 on October 1, 1984, being the final rule for the Surface Coal Mining and Reclamation operations under a Federal program for Tennessee. The proposed amendments are needed in order to conform OSM's regulations with the July 6, 1984 and October 1, 1984 Orders in *In Re:Permanent Surface Mining Regulation Litigation:* Civil Action 79-1144, issued by Judge Thomas A. Flannery, United States District Court for the District of Columbia, and should become effective immediately as emergency rules with comments allowed after the rules go into effect. Failure to promulgate these amendments as emergency rules will create an imminent danger to the health or safety of the public, and/or would cause, or can reasonably be expected to cause significant, imminent environmental harm.

Petitioner Save Our Cumberland Mountains is a statewide citizens organization dedicated to the effective control and regulation of coal surface mining in Tennessee.

Petitioner Tennessee Citizens for Wilderness Planning is a statewide conservation organization dedicated to work on environmental concerns including the effective control and regulation of surface mining for Tennessee.

Petitioner the Sierra Club is a national citizens organization dedicated to protecting our environment. The Sierra Club has been actively involved in coal surface mining laws throughout the nation. In Tennessee the Club has sought to have the laws strictly and fairly enforced.

Petitioner Legal Environmental Assistance Foundation is a regional public interest law firm and membership organization providing legal and technical assistance to citizens in the southeast on environmental and health issues. The LEAF organization in Tennessee is especially concerned with the effective control and regulation of coal surface mining.

Petitioner the Environmental Policy Institute is a national organization working with citizens concerning protection of the environment including effective control and regulation of coal surface mining.

The petitioners are in the zone of interest to be protected by these regulations and will be adversely affected unless the amendments are immediately implemented as emergency rules. All of the petitioners have actively participated in the rulemaking for the Federal Program in Tennessee by presenting oral testimony at the public hearing held on August 3, 1984 and by submitting written comments. The petitioners file this petition without waiving any right to judicial review concerning OSM's promulgation of these regulations or failure to implement the amendments as emergency rules.

I. The Proposed Amendments

The Petitioners request promulgation of the following changes in OSM's regulations for a federal program in Tennessee:

(1) Amend 30 CFR 942.800 by adding to this section the requirement to file a bond found at 30 CFR 800.11(b), revised as of July 1, 1982. (Appended to this Petition).

(2) Amend 30 CFR 942.800 concerning period of performance bond liability, by removing subsection (a)(2) in its entirety.

(3) Amend 30 CFR 942.816(a) by inserting provisions for protection of endangered and threatened species as set forth in 30 CFR 816.97 (a) and (b) revised as of July 1, 1982. (Appended to this Petition).

(4) Amend 30 CFR 942.816(e), backfilling and grading to provide that cut-and-fill terraces, 30 CFR 816.102(g), is deleted in its entirety.

(5) Amend 30 CFR 942.816(e), backfilling and grading by including the following definition of thin overburden as set forth in 30 CFR 816.104(a), revised as of July 1, 1982:

The provisions of this section apply only where the final thickness is less than 0.8 of the initial thickness. Initial thickness is the sum of the overburden and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each mine plan area. The provisions of this section apply only when surface mining activities cannot be carried out to comply with 30 CFR 816.101 [sic] to achieve the approximate original contour.

(6) Amend 30 CFR 942.816(e), backfilling and grading by including the following definition of thick overburden as set forth in 30 CFR 816.105(a) revised as of July 1, 1982:

The provisions of this section apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness prior to removal of coal. Final thickness is the product of the overburden thickness prior to removal of coal, times the bulking factor to be determined for each mine plan area. The provisions of the section apply only when surface mining activities cannot be carried out to comply with § 816.101 [sic] to achieve the approximate original contour.

(7) Amend 30 CFR 942.817 by providing that the following phrase: "To

the extent required under state law" in 30 CFR 817.121(c)(2) shall not apply.

(8) Amend 30 CFR 942.816(g), roads, to adopt the regulations set forth in 30 CFR 816.150–816.156, 816.160–816.166, and 816.170–816.176 revised as of July 1, 1982. (Appended to this Petition).

(9) Amend 30 CFR 942.817(f), roads to adopt the regulations set forth in 30 CFR 817.150–817.156, 817.160–817.166, and 817.170–817.176 revised as of July 1, 1982. (Appended to this Petition).

(10) Amend 30 CFR 942.823, prime farm land, to delete the requirement of 30 CFR 823.11 (a) and (b).

(11) Amend 30 CFR Part 942 to add all of the provisions governing mining on federal lands as set forth in 30 CFR Parts 740, 741, 742, 743, and 744 revised as of July 1,1982. (Appended to this Petition).

(12) Amend 30 CFR 942.701(a) to replace the definition of "coal preparation plant" and "coal preparation or coal processing" with the definition of "coal processing plant" as set forth in 30 CFR 701.5 revised as of Juy 1, 1982. (Appended to this Petition).

(13) Amend 30 CFR 942.779 to reinstate the regulations for fish and wildlife resources information set forth in 30 CFR 779.20 as adopted on March 13, 1979 (44 FR 15356). (Regulations appended to this Petition).

(14) Amend 30 CFR 942.780 to reinstate the regulations for fish and wildlife plans set forth in 30 CFR 780.16 as adopted on March 13, 1979 (44 FR 15359). (Regulations appended to this Petition).

II. Reasons for Granting this Petition

On August 10, 1982, OSM conditionally approved Tennessee's permanent regulatory program. 47 FR 34753. Tennessee adopted regulations to conform with the federal OSM regulations promulgated under U.S. Department of the Interior Secretary Cecil Andrus. Not only were the Andrus regulations used by OSM and adopted by the states gaining primacy under the Act, but they also survived significant court challenges. From August 10, 1982 until October 1, 1984 the Tennessee regulations, adopted in conformity with the Andrus regulations, were used in Tennessee. Not until OSM published its final rule for a Federal Program in Tennessee were the new regulations promulgated under U.S. Department of the Interior Secretary James Watt thrust upon Tennessee.

The above Watt rules are invalid. *In Re: Permanent Surface Mining Regulation Litigation,* Civil Action No. 79–1144 (D.D.C. July 6, 1984 and October 1, 1984). The decisions issued by Judge Flannery are final and were not appealed and/or were not stayed. The above amendments are needed in order for the regulations published for the OSM Federal Program in Tennessee to conform to the court's orders. Immediate conformity will enable OSM to establish a legally valid federal program in Tennessee initially.

In explaining its refusal to adopt either the current Tennessee regulations or the original Andrus regulations as portions of the Tennessee Federal program, OSM stated that it would be premature to substitute the original regulations simply on the grounds that the new Watt regulations were being challenged in court. OSM stated in the preamble to the OSM Federal program in Tennessee that "those regulations remain valid unless and until set aside by a court. Should any regulations be invalidated, OSM will make required modifications for future rule making", 49 FR 38880 (October 1, 1984). Having received notice of the court's order, OSM is obligated to speedily amend the invalid regulations as ordered.

Certain actions by OSM set a precedent for the petitioned amendments. OSM modified its regulation concerning off-site facilities, 30 CFR 942.701(a) in an effort to comply with the court's July 6, 1984 decision. (49 FR 38883) (October 1, 1984). Watt regulation concerning backfilling and grading. Concurrent reclamation was adopted by OSM for Tennessee, 30 CFR 942.816(e), similar to the Andrus regulation, 30 CFR 816.101, and as ordered in the October 1, 1984 court decision by Judge Flannery. Therefore, OSM has already recognized the need to improve upon the Watt regulations in these instances.

The above amendments will allow for a smoother transition from state to federal primary. Because industry, the public, and the regulatory authority have used only regulations resembling the Andrus regulations in Tennessee, the above amendments will limit confusion and eliminate the need for industry to make major changes in its procedures. Therefore, from a practical standpoint the amendments are necessary. As OSM has previously stated, "the transition from state to federal primacy offers the potential for confusion among all concerned over both the timing and the substance of required actions." 49 FR 38879 (October 1, 1984). It will be less confusing for both industry and the public to use the original OSM regulations instead of OSM first implementing the invalid Watt regulations and then changing back to the original Andrus regulations well into the Federal Program.

III. Conclusion

For all the foregoing reasons, petitioners urge OSM without delay to commence a rule making proceeding pursuant to 5 U.S.C. 553 to promulgate the amendments to the rules set forth above. Since the OSM Federal program in Tennessee is now operating under regulations that have been invalidated, timely action on this petition is of the essence.

The petitioners expect a ruling within ninety (90) days pursuant to 30 CFR 700.12(d) and are prepared to file suit unless OSM takes timely needed action. Further, the petitioners expect additional amendments necessary to conform with future orders or settlement agreements in *In Re: Permanent Surface Mining Regulation Litigation,* Civil Action No. 79–1144 including reinstatement of the Andrus regulations. Petitioners do not waive any right to judicial review concerning these regulations and the requested amendments. The petitioners request a public hearing after implementation of the amendments as emergency rules.

[FR Doc. 85–2457 Filed 1–31–85; 8:45 am]
BILLING CODE 4310–05–M

VETERANS ADMINISTRATION

38 CFR Part 14

Violation of Penal Statutes

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The proposed amendment modifies the internal handling of Veterans Administration (VA) matters involving violations of penal laws. The creation of the VA Inspector General (IG) under the Inspector General Act (Pub. L. 95–452), agreements between the VA IG and the Department of Justice, and discussions between the Office of the VA General Counsel and the IG have made the IG a part of the criminal referral process in cases involving fraud within the VA. This proposed amendment formalizes the IG roles. Additional changes are primarily editorial.

DATES: Comments must be received on or before February 28, 1985. Because this amendment will merely bring the Agency's published regulations on the internal procedures for referral of criminal cases into conformity with internally circulated guidance developed to implement the Inspector General Act, it is proposed to make this amendment effective on the date of final approval.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed regulation to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420.

All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, of the above address, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Audley Hendricks, (202) 389–5030.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that these regulations are non-major as that term is defined by Executive Order 12291. The proposed regulations will apply to internal Agency procedures. The proposed regulations 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 on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility

The Administrator has certified that this proposed amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this proposed amendment will affect only the Agency's internal handling of matters relating to violations of penal laws. It will, therefore, have no significant direct impact on small entities (i.e., small business, small private and nonprofit organizations, and small governmental jurisdictions.)

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Foreign relations, Lawyers, Organization and functions (Government agencies), Tort claims, Veterans.

Approved: January 8, 1985.

By direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator.

PART 14—[AMENDED]

38 CFR Part 14, GENERAL COUNSEL, LEGAL SERVICES, is amended by revising § 14.560 and its title to read as follows:

§ 14.560 Procedure where violation of penal statutes is involved including those offenses coming within the purview of the Assimilative Crime Act (18 U.S.C. 13).

(a) Allegations of crimes against the person or property, or other non-fraudulent criminal matters will be referred by the District Counsel, within whose jurisdiction the alleged offense appears to have been committed, to the appropriate U.S. Attorney, FBI, or local law enforcement agency, according to local practice. (38 U.S.C. 210(c)(1))

(b) Allegations of fraud, corruption or other criminal conduct involving programs and operations of the VA will be referred to the Office of the Inspector General. (38 U.S.C. 210(c)(1); sec. 4, Pub. L. 95–452)

(c) The Department of Justice, or the U.S. Attorneys, are charged with the duty and responsibility of interpreting and enforcing criminal statutes, and the final determination as to whether the evidence in any case is sufficient to warrant prosecution is a matter solely for their determination. If the Department of Justice or U.S. Attorney decides to initiate action, the District Counsel will cooperate as may be requested. The District Counsel will promptly bring to the attention of the General Counsel any case wherein he or she is of the opinion that criminal or civil action should be initiated notwithstanding a decision by the U.S. Attorney not to bring such action; any case where action has been inordinately delayed; and any case which would cause significant publicity or notoriety. (38 U.S.C. 210(c)(1))

[FR Doc. 85–2618 Filed 1–31–85; 8:45 am]

BILLING CODE 8320–01–M

POSTAL SERVICE

39 CFR Part 111

Combined Presort and ZIP+4 Presort First-Class Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would eliminate the minimum percentage of ZIP+4 coded mail pieces that a combined Presort First-Class mailing must contain, until at least March 16, 1986. In connection with this proposal, the Postal Service suspends the scheduled February 1, 1985 increase in the minimum to 90 percent. The current 85 percent minimum will be retained pending completion of this rulemaking. These changes are designed to assist Presort mailers in the conversion of their mailing lists to usage of ZIP+4 codes by permitting these mailers to maintain the current level of presortation of their mail during the conversion process.

DATES: The increase from 85 to 90 in the minimum percentage of pieces in a combined Presort mailing that must bear a ZIP+4 code, scheduled for February 1, 1985, is suspended, pending the completion of this rulemaking. Comments on this proposed rule must be received on or before March 4, 1985.

ADDRESS: Written comments should be directed to General Manager, In-Plant Systems, In-Plant Processing Office, Mail Processing Department, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW, Washington, D.C. 20260–7113. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the Mail Processing Department, Room 7817, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Donald D. Dillman, (202) 245–5187.

SUPPLEMENTARY INFORMATION: On January 31, 1984, the Postal Service published a final rule governing ZIP+4 First-Class Mail (49 FR 3852). As part of that rule, the Postal Service amended its regulations, contained in the Domestic Mail Manual and incorporated by reference in the Code of Federal Regulations, to include a section 365 which permitted mailers to combine ZIP+4 and non-ZIP+4 pieces in a Presort First-Class mailing. This regulation provided that, for an eighteen month transition period, a combined Presort mailing could contain a percentage of pieces which did not bear a ZIP+4 code. Those pieces would remain eligible for the Presort First-Class Mail discount but would not qualify for the additional ZIP+4 discount.

Section 365 currently provides that until February 1, 1985, at least 85 percent of the pieces in a combined Presort mailing must bear the ZIP+4 code. Effective February 1, the minimum percentage is scheduled to increase to 90 percent. Section 365 is currently scheduled to expire on October 1, 1985, at which time combined mailings would

not be permitted and ZIP+4 Presort First-Class mailings would be required to be made separately from regular Presort First-Class mailings.

By this proposed rule, the Postal Service solicits comments on a proposal to eliminate any minimum percentage requirement for an extended transition period to last until at least March 16, 1986 (the first Sunday of Quarter 3, Postal Fiscal Year 1986). In connection with this proposal, the Postal Service suspends the February 1, 1985 increase in the minimum from 85 to 90 percent, pending the completion of this rulemaking. As explained below, the Postal Service believes these changes are necessary (1) to aid the continued conversion to the usage of the ZIP+4 code by Presort mailers, (2) to facilitate ZIP+4 conversion of the mail of customers of presort service bureaus, and (3) to facilitate ZIP+4 conversion by large mailers who merge multiple mailing lists for entry as Presort First-Class Mail.

The Postal Service has determined not to implement the stricter Presort ZIP+4 make-up regulations scheduled to take effect February 1, 1985, in response to continuing problems experienced by mailers participating in, or exploring participation in, the ZIP+4 program. Difficulties have arisen because the techniques used by mailers to add ZIP+4 codes to lists of addresses often have been successful in matching only 80–90 percent of the records in an address list with entries in the Postal Service's ZIP+4 national tape directory. The failure to consistently produce match rates of 90 percent and above has stemmed from several problems.

First, errors in the address information in mailers' records often have made it impossible to locate corresponding entries in the Postal Service's directory. Second, many mailers utilize standard computer software, available from commercial vendors, which is not sufficiently sophisticated to produce extremely high match rates. Third, many mailers are unable to add ZIP+4 codes to new or changed addresses with the frequency required to maintain a very high conversion rate. Fourth, some matching failures are traced to the Postal Service's directory of ZIP+4 codes. The Postal Service continually updates and corrects its ZIP+4 directory, but a complete data base has not yet been achieved. Fifth, a relatively small problem is created by new real estate development. Where new development occurs, there appears to be no practical way to avoid lags in coding by the Postal Service and then by mailers.

Given these problems, the Postal Service has determined that it would be detrimental to the development of the ZIP+4 program to increase the minimum percentage of ZIP+4 coded pieces required in a combined Presort mailing at this time. We also believe such an action would not be in keeping with the good faith efforts of many mailers who are currently in the process of converting their mailing lists to usage of ZIP+4 codes. For these reasons, the Postal Service suspends the February 1, 1985 increase in the minimum percentage of ZIP+4 pieces in combined Presort mailings permitted under section 365 of the Domestic Mail Manual. The current 85 percent minimum will remain in effect pending the completion of this rulemaking.

In addition to the problems noted above in obtaining a high match rate in converting individual mailing lists to usage of ZIP+4 codes, a large number of Presort mailers face further barriers to ZIP+4 conversion. In order to maximize the level of presortation of their mail, many mailers use the services of presort bureaus who merge the mail of a number of mailers before presenting it to the Postal Service. However, this means that the entire merged mailing entered by the presort bureau must meet the current 85 percent ZIP+4 coded piece requirement for combined Presort mailings to obtain the ZIP+4 discount on any piece in the mailing. Thus, in order to offer any ZIP+4 discount savings to any of its customers, a presort bureau must convince virtually all of its customers to correct their mailing lists at the same time.

Informal discussions conducted by the Postal Service with presort service bureaus indicate that the extreme difficulty of this task has deterred presort bureaus from encouraging their customers to convert to ZIP+4 usage. To qualify ZIP+4 mail under the current regulations, presort service bureaus would have to set up two separate mailstreams—one for ZIP+4 coded mail and one for the remainder. This process cannot work effectively unless the service bureau converts a large number of its customers in a short time period. Failure to accomplish this difficult task would lead to a loss in presort densities and a resultant lowering of the mail volume qualifying for the Presort discount. This would cause an unacceptable cost increase for the presort service bureaus.

This dilemma is not limited to mail processed by presort service bureaus. A large mailer with multiple lists generated in various parts of its organization has basically the same problem in meeting the combined mailing percentage without losing presort densities. This is especially true with the common practice of converting lists to ZIP+4 usage in stages.

Thus, mailers who use presort service bureaus and mailers who merge multiple mailing lists have not been able to take full advantage of the current transition period provided by section 365, Domestic Mail Manual, for the conversion of mailing lists to ZIP+4 code usage. In order to provide a greater opportunity for these mailers to convert their lists, the Postal Service is proposing to amend this regulation to permit, for an extended transition period to last until at least March 16, 1986, full commingling of ZIP+4 and 5-digit ZIP Coded pieces in combined Presort mailings. Except for the requirement in section 365.31 that the mailing contain a minimum of 500 pieces bearing a ZIP+4 code, no minimum percentage of ZIP+4 coded pieces would be required. This change would give Presort mailers time to convert all of their mailing lists to ZIP+4 codes while permitting them to take advantage of ZIP+4 discounts on qualifying pieces as lists are being converted. All of this would be accomplished without the loss of Presort densities.

If this proposal is adopted, the Postal Service will work with presort service bureaus and other affected mailers to devise supplemental mail verification procedures to ensure that the Postal Service is provided with sufficient information to determine the volume of mail eligible for the ZIP+4 discount.

Elimination of the minimum ZIP+4 piece requirement for this extended transition period is expected to generate significant additional ZIP+4 mail volume. This volume increase is needed to facilitate the Postal Service's efforts to increase the processing of mail on automated equipment at the incoming secondary level (sortation to carrier route).

The proposed temporary elimination of any ZIP+4 percentage commingling requirements will not present any significant operational consequences for the Postal Service. While some rehandling costs will be incurred as we expand incoming secondary distribution of ZIP+4 mail on bar code sorters, these costs will not be of sufficient magnitude to offset the benefits that will be derived from facilitating the entry of customers into the ZIP+4 program.

In conjunction with these efforts to facilitate additional mail conversion to ZIP+4 code usage and in anticipation of increased ZIP+4 mail volumes, the Postal Service is also conducting

operational tests at a number of automated sites to determine the feasibility of incoming secondary processing of small volumes of ZIP+4 mail. In order to process presorted ZIP+4 mail to the carrier route or to another equally fine sortation level on the Postal Service's automated equipment, it is first necessary to apply a bar code on the mail piece by running it through an optical character reader (OCR) during the incoming primary sortation. Since this is accomplished at an automated postal facility, it is not necessary to require such mail to be presorted to the 5-digit ZIP Code level. A 3-digit ZIP Code sort is sufficient to direct the mail to the appropriate destinating automated facility where it will be sorted on an OCR to the delivery zone. In fact, under this approach, when Presort ZIP+4 mail is presented in packages sorted to the 5-digit level, the Postal Service can incur additional handling costs if the packages must be broken open and the mail trayed before it is processed on an OCR.

For these reasons, it is the intention of the Postal Service to implement a change in the make-up rules for Presort ZIP+4 mail to provide for 3-digit ZIP Code presortation only. The unresolved question is when this change should take effect. This decision is contingent upon the development of a sufficient level of ZIP+4 mail volume.

The purpose of the tests we are starting is to determine the threshold volume necessary before we can economically justify the incoming secondary processing of Presort ZIP+4 mail on the automated equipment at any facility. During the tests, we will process all Presort ZIP+4 mail as if it were presorted only to 3 digits—by processing it on an OCR in a batch mode, applying bar codes and performing an incoming primary sort. The ZIP+4 coded mail will then receive an incoming secondary sort to the carrier route (or equivalent) on a bar code sorter.

If the proposed extended transition period produces a substantial increase in ZIP+4 mail volume and if the operational tests prove successful, the Postal Service intends to move forward quickly with plans to change the requirements for Presort First-Class Mail to provide for the 3-digit ZIP Code sortation of Presort ZIP+4 mailings. The Postal Service anticipates that this change, which would be timed to be implemented at the end of the extended transition period, would be made in conjunction with the establishment of a new permanent minimum level of ZIP+4 pieces in a combined Presort mailing. That minimum would be set at a level consistent with the match rates that mailers, with well-maintained address lists, might reasonably expect to achieve using state-of-the-art software available at the time. Once 3-digit ZIP Code sortation is permitted for Presort ZIP+4 mailings, a high level of ZIP+4 coded pieces in those mailings is necessary to ensure that distribution savings are produced through the automation of the incoming secondary sortation process.

The Postal Service has a high expectation that this program will prove successful because, in our discussions with presort service bureaus, we found a very favorable attitude toward the combination of an extended transition period to be followed by the sortation of ZIP+4 Presort mail to 3-digit ZIP Code areas.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

In 365, amend 365.2 to read as follows:

365—Combined Presort Mailings

* * * * *

365.2 Transition Period

Until March 16, 1986, mailers are permitted to fully combine ZIP+4 Presort First-Class Mail and regular Presort First-Class Mail. Except as provided in 365.31, no minimum number of ZIP+4 coded pieces is required. This section expires March 16, 1986, at which time it is expected that a permanent minimum percentage of ZIP+4 coded pieces in a combined Presort mailing will be implemented.

An appropriate amendment to 39 CFR 111.3 to reflect this change will be published when the final rule is adopted.

(39 U.S.C. 101(d), 401, 403, 404)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-2709 Filed 1-31-85; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 84-1299]

Establishment of Satellite Systems Providing International Communications; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communication Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: This action extends the comment period for the Commission's Notice of Inquiry and Proposed Rulemaking in Common Carrier Docket No. 84-1299, "Establishment of Satellite Systems Providing International Communications," FCC 84-632 (released January 4, 1985) regarding the construction and operation of satellite systems providing international services.

This action is taken by the Commission in its efforts to obtain comments and information on the recommendations forwarded by the Departments of State and Commerce, on the authorization of additional satellite systems, on the international communication services market, and on the communications satellite market.

This action will extend the time period for the comments and reply comments in order to grant parties the opportunity to respond more fully to the issues presented in the Notice.

DATES: Comments are due April 1, 1985. Reply Comments are due June 5, 1985.

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

FOR FURTHER INFORMATION CONTACT: Barbara Lynch, Common Carrier Bureau, (202) 632-7265.

SUPPLEMENTARY INFORMATION:

Order

In the matter of establishment of satellite systems providing international communications; CC Docket No. 84-1299.

Adopted: January 23, 1985.

Released: January 25, 1985.

By the Chief, Common Carrier Bureau.

1. On December 19, 1984, the Commission adopted a Notice of Inquiry and Proposed Rulemaking in Common Carrier Docket No. 84-1299, "Establishment of Satellite Systems Providing International Communications," FCC 84-632 (released January 4, 1985), regarding the construction and operation of satellite

systems providing international services. The purpose of the Notice is to solicit data and analyses regarding issues that have arisen in connection with the filing of a series of applications for authority to establish communications satellites that would provide international services, and to obtain comments on the recent executive branch decision that such systems are "required in the national interest" subject to certain limitations. The Commission ordered that interested parties may file comments on the Notice on or before February 14, 1985 and reply comments on or before March 7, 1985.

2. In the Notice, we requested comments and information on a significant number of issues which will require the collection of detailed information about the satellite industry and sophisticated analyses of that information. Upon reconsideration, we believe that the comment period as presently scheduled may not accord parties the time necessary to accurately collect the requested information and to property prepare comments. Therefore, we will extend the comment period in order to grant parties the opportunity to respond more fully to the issues presented in the Notice.

3. Accordingly, it is ordered, pursuant to § 0.291 of the Commission's Rules and Regulations, 47 CFR 0.291 (1983), that the comment period for the Notice of Inquiry and Proposed Rulemaking in Common Carrier Docket No. 84-1299, "Establishment of Satellite Systems Providing International Communications," FCC 84-632 (released January 4, 1985), is extended. Interested parties may file comments on or before April 1, 1985 and reply comments on or before June 5, 1985.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 85-2681 Filed 1-31-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-1; RM-4726]

FM Broadcast Station in Big Flats, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign FM Channel 249A to Big Flats, New York, as that community's first local broadcast service, in response to a petition filed by the Heron Corporation.

DATES: Comments must be filed on or before March 15, 1985, and reply comments on or before April 1, 1985.

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

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Big Flats, New York); MM Docket No. 85-1, RM-4726.

Adopted: January 2, 1985.

Released: January 22, 1985.

By the Chief, Policy and Rules Divisions.

1. A petition for rule making has been filed by the Heron Corporation ("petitioner"), seeking the assignment of FM Channel 249A at Big Flats, New York, as its first local FM service. Petitioner submitted information in support of the proposal and stated that it would apply for the channel, if assigned. Channel 249A can be assigned to Big Flats, New York, consistent with the minimum distance separation requirements provided there is a site restriction of 1.13 kilometers northwest of the community. The site restriction will prevent a short spacing to Channel 249A at Jersey Shores, Pennsylvania.

2. Since the assignment of Channel 249A to Big Flats, New York, is within 320 kilometers (200 miles) of the common U.S.-Canadian border, the concurrence of the Canadian government is required.

3. In view of the fact that the proposed assignment could provide a first local FM broadcast service to Big Flats, New York, the Commission believes it is appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Big Flats, NY		249A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before March 15, 1985, and reply comments on or before April 1, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or their counsel, as follows:

A. Wray Fitch III, Gammon & Grange, 1925 K Street, NW., Suite 300, Washington, D.C. 20006, (Counsel for the Heron Corporation)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 85-2676 Filed 1-31-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-2; RM-4809]

TV Broadcast Station in Rice Lake City, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign UHF Television Channel 16 to Rice Lake City, Wisconsin, as that community's first primary television service, in repsonse to a petition filed on behalf of James F. Dorrance, Jr.

DATE: Comments must be filed on or before March 15, 1985, and reply comments on or before April 1, 1985.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Televison broadcating.

Proposed Rule Making

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations (Rice Lake City, Wisconsin); MM Docket No. 85-2, RM-4809.

Adopted: January 7, 1985.
Released: January 22, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed on behalf of James F. Dorrance, Jr. ("petitioner"), seeking the assignment of UHF television Channel 16 to Rice Lake City, Wisconsin, as that community's first primary television channel. Petitioner indicates that he will apply for the channel, if assigned.

2. Rice Lake City (population 7,691),[1] in Barron County (population 38,730), is located in northwestern Wisconsin, approximately 130 kilometers (80 miles) northeast of Minneapolis, Minnesota. Currently, the only television outlet licensed to serve Rice Lake City is low power television Station W15AB-TV.

3. A staff engineering study reveals that UHF television Channel 16 can be assigned to Rice Lake City in conformity with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission Rules. However, because Rice Lake City is located within 400 kilometers (250 miles) of the common U.S.-Canadian border, the Commission must obtain Canadian concurrence in the proposal.

4. In view of the foregoing, and the fact that the proposed assignment could provide a first primary television service to Rice Lake City, the Commission believes it is appropriate to propose amending the Television Table of Assignments, § 73.606(b) of the Commission's Rules, with respect to that community, as follows:

City	Channel No.	
	Present	Proposed
Rice Lake City, WI		16

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before March 15, 1985, and reply comments on or before April 1, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Allan G. Moskowitz, Esq., Shrinsky, Weitzman and Eisen, P.C., 1120 Connecticut Avenue, NW., Suite 270, Washington, D.C. 20036.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V.

[1] Population figures were extracted from the 1980 U.S. Census.

Joyner, or Stanley Schmulewitz, (202) 634–6530, Mass Media Bureau. However members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who file comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 85–2677 Filed 1–31–85; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 50, No. 22
Friday, February 1, 1985

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

Office of the Secretary

Human Nutrition Board of Scientific Counselors; Board Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of the Secretary schedules the following meeting. Due to administrative error, notice of the meeting was delayed.

Name: Human Nutrition Board of Scientific Counselors.

Date: February 6-8, 1985.

Time and place: February 6-8, 1985; Conference Room 225, Building 308, Human Nutrition Research Center, Beltsville Agricultural Research Center, Beltsville, Maryland. February 6-7, 9:00 a.m.-5:00 p.m.; February 8, 9:00 a.m.-Noon.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose

To review and advise the Department as to the scope and quality of the research carried out at the Human Nutrition Research Centers in Houston, Texas; Boston, Massachusetts; San Francisco, California; Grand Forks, North Dakota; and Beltsville, Maryland. The board will also prepare an annual report of its review, including evaluation and recommendations, to be submitted to the Secretary of Agriculture.

Contact Person

Anne Winslow, Confidential Assistant, Office of the Assistant Secretary for Science and Education, U.S. Department of Agriculture, Room 217-W, Administration Building, Washington, DC 20250, telephone (202) 447-5035.

Done at Washington, DC, this 30th day of January 1984.

Anne Winslow,

Confidential Assistant, Science and Education.

[FR Doc. 85-2756 Filed 1-31-85; 8:45 am]

BILLING CODE 3410-01-M

Federal Grain Inspection Service

Designation Renewal of Alabama Department of Agriculture and Industries (Alabama) and D.R. Schaal Agency (Iowa)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Alabama Department of Agriculture and Industries (Alabama) and D.R. Schaal Agency (Schaal) as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

EFFECTIVE DATE: March 1, 1985.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The September 4, 1984, issue of the **Federal Register** (49 FR 34881) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Alabama's and Schaal's designations terminate on February 28, 1985, and requesting applications for designation as the agency to provide official services within each specified geographic area. Applications were to be postmarked by October 4, 1984.

Alabama and Schaal were the only applicants for each respective designation.

FGIS announced the names of these applicants and requested comments on same in the November 1, 1984, issue of the **Federal Register** (49 FR 43979). Comments were to be postmarked by December 17, 1984.

No comments were received regarding Alabama's or Schaal's designation renewal.

FGIS has evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act (7 U.S.C. 71 *et seq.*), and in accordance with section 7(f)(1)(B), has determined that Alabama and Schaal are able to provide official services in the respective geographic areas for which their designations are being renewed. Each assigned area is the entire geographic area, as previously described in the September 4 **Federal Register** issue.

Effective March 1, 1985, and terminating February 28, 1988, Alabama is responsible to provide official inspection and Class X or Class Y weighing services in its specified geographic area and Schaal is responsible to provide official inspection services in its specified geographic area.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

Alabama Department of Agriculture and Industries, Beard Building, P.O. Box 3336, Montgomery, AL 36109

D.R. Schaal Agency, 219 River Avenue North, P.O. Box 213, Belmond, IA 50421.

(Sec. 8, Sec. 9, Pub. L. 94-582, 90 Stat. 2873, 2875 (7 U.S.C. 79, 79a))

Dated: January 14, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85-2475 Filed 1-31-85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Alaska Department of Natural Resources, Division of Agriculture (Alaska), Little Rock Grain Exchange Trust (Arkansas), and Memphis Grain and Hay Association (Tennessee)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the areas currently assigned to Alaska Department of Natural Resources, Division of Agriculture; Little Rock Grain Exchange Trust; and Memphis Grain and Hay Association.

DATE: Comments to be postmarked on or before March 18, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The November 28, 1984, issue of the Federal Register (49 FR 46775) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by December 28, 1984.

Alaska Department of Natural Resources, Division of Agriculture, Little Rock Grain Exchange Trust, and Memphis Grain and Hay Association, the only applicants for each respective designation, requested designation for the entire geographic area currently assigned to each of those agencies.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice, and postmarked not later than March 18, 1985.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: January 14, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85-2476 Filed 1-31-85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Perform Official Services in the Geographic Areas Currently Assigned to Grain Inspection, Inc. (North Dakota) and Kankakee Grain Inspection Bureau, Inc. (Illinois)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each specified agency. The official agencies are Grain Inspection, Inc., and Kankakee Grain Inspection Bureau, Inc.

DATE: Applications to be postmarked on or before March 4, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*, at 79(f)(1)) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area. Grain Inspection, Inc. (Jamestown), 217 4th Avenue, NW., P.O. Box 1652, Jamestown, ND 58401, and Kankakee Grain Inspection Bureau, Inc. (Kankakee), 550 North Fifth Avenue, P.O. Box 102, Kankakee, IL 60901, were each designated under the Act as an official agency to perform inspection functions on August 1, 1982.

Each agency's designation terminates on July 31, 1985. Section 7(g)(1) of the Act states, generally, that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Jamestown, in the State of North Dakota, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by Interstate 94 east to U.S. Route 85; U.S. Route 85 north to State Route 200; State Route 200 east to U.S. Route 83; U.S Route 83 southeast to State Route 41; State Route 41 north to State Route 200; State Route 200 east to State Route 3; State Route 3 north to U.S. Route 52; U.S. Route 52 southeast to State Route 15; State Route 15 east to U.S. Route 281; U.S. Route 281 south to Foster County, the northern Foster County line; the northern Griggs County line east to State Route 32;

Bounded on the East by State Route 32 south to State Route 45; State Route

45 south to State Route 200; State Route 200 west to State Route 1; State Route 1 south to the Soo Railroad line; the Soo Railroad line southeast to Interstate 94; Interstate 94 west to State Route 1; State Route 1 south to the Dickey County line;

Bounded on the South by the southern Dickey County line west to U.S. Route 281; U.S. Route 281 north to the Lamoure County line; the southern Lamoure County line; the southern Logan county line west to State Route 13; State Route 13 west to U.S. Route 83; U.S. Route 83 south to the Emmons County line; the southern Emmons County line; the southern Sioux County line west State route 49; State Route 49 north to State Route 21; State route 21 west to the Burlington-Northern (BN) line; the Burlington-Northern (BN) line Northwest to State Route 22; State Route 22 south to U.S. Route 12; U.S. Route 12 West-northwest to the North Dakota State line; and

Bounded on the West by the western North Dakota State line north to Interstate 94.

The following locations, outside of the foregoing contiguous geographic area, are presently assigned to Jamestown and are part of this geographic area assignment:

1. Farmers Coop Elevator, Fessenden, Wells County.

2. Farmers Union Elevator and Manfred Grain, Manfred, Wells County.

3. Norway Spur and Oakes Grain, Oakes, Dickey County.

Exceptions to the described geographic area are the following locations situated inside Jamestown's area which have been and will continue to be serviced by these official agencies:

Aberdeen Grain Inspection, Inc.:

1. Famers Elevator, Guelph, Dickey County.

2. Farmers Equity Exchange and Sun Grain, New England, Hettinger County.

3. Regent Grain Company and Regent Equity, Regent, Hettinger County.

Minot Grain Inspection, Inc.:

1. Farmers Elevator & Mercantile Co., and Coast Trading Company, Underwood, McLean County.

2. Merle A. Larson Elevator, Inc., Washburn, McLean County.

The geographic area presently assigned to Kankakee, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the northern Bureau County line; the northern LaSalle and Grundy County lines; the northern Will County line east-southeast to Interestate 57;

Bounded on the East by Interstate 57 south to U.S. Route 52; U.S. Route 52 south to the Kankakee County line;

Bounded on the South by the southern Kankakee and Grundy County lines; the southern LaSalle County line west to State Route 17; State Route 17 west to U.S. Route 51; U.S. Route 51 north to State Route 18; State Route 18 west to State Route 26; State Route 26 north to Interstate 180; Interstate 180 west to State Route 29; State Route 29 south to the Bureau County line; the southern Bureau County line west to State Route 88; and

Bounded on the West by State Route 88 north to the Bureau County line.

An exception to the described geographic area is the following location situated inside Kankakee's area which has been and will continue to serviced by Eastern Iowa Grain Inspection and Weighing Service, Inc.: Leland Farmers Company, Leland, LaSalle County.

Interested parties, including Jamestown and Kankakee, are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designations in the specified geographic areas are for the period beginning August 1, 1985, and ending July 31, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: January 14, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 84-2477 Filed 1-31-85; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

International Trade Administration

Harvard University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-291. Applicant: Harvard University, Cambridge, MA 02138. Instrument: Optical Microscope, Model Laborlux 12 POL. Manufacturer: Leitz, West Germany. Intended use: See notice at 49 FR 39356.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) polarizing capabilities, (2) magnification to 500, (3) a working distance of 15 millimeters and (4) a small (less than 17 millimeters) diameter objective. The National Bureau of Standards advises in its memorandum dated November 23, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-2658 Filed 1-31-85; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Environmental Health Sciences; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, D.C.

Docket No. 84-034. Applicant: National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709. Instrument: Mass Spectrometry Data System, 11/250. Manufacturer: VG Analytical, United Kindgom. Intended use: See notice at 49 FR 1783.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article will replace the data system of a previously imported (duty-free) instrument thus expanding the capabilities of the existing instrument to allow, (1) a data acquisition rate up to 250 kilohertz, (2) data acquisition at scan rates of 0.1 second/decade at a resolution of 1000, and (3) averaging of mass spectra with up to 10,000 peaks per scan [permitting the accurate measuring, storage and plotting of spectra up to 5000 atomic units]. The National Bureau of Standards advises in its memorandum dated November 26, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-2657 Filed 1-31-85; 8:45 am]

BILLING CODE 3510-DS-M

Southern Illinois University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, D.C.

Docket No. 84-244. Applicant: Southern Illinois University, Carbondale, IL 62901. Instrument: Gas Chromatograph, Mass Spectrometer, Model MS 80 with Accessories. Manufacturer: Kratos Analytical Instruments, United Kingdom. Intended use: See notice at 49 FR 30984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) a mass range of 1 to 2,400 at full accelerating potential of 4000 electron volts, (2) a scanning speed of 0.4 seconds below mass 2400, (3) fast atom bombardment, and (4) a comprehensive data system with library search and spectrum storage capabilities.

Domestic manufacturers of comparable instruments were requested to bid. The Nuclide Corporation declined to bid and is therefore not considering willing to have supplied the instrument. The National Bureau of Standards advises in its memorandum dated November 14, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-2654 Filed 1-31-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Southern Mississippi; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-330. Applicant: University of Southern Mississippi, Hattiesburg, MS 39406-5003. Instrument: Viscometer and Accessories. Manufacturer: W. Krannich-Zimm-Crothers, West Germany. Intended use: See notice at 49 FR 42774.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is capable of measuring the viscosity (< 5.0 centipoises) of very high molecular weight polymers at extremely low shear rates (10,000 to 10 reciprocal seconds). The National Bureau of Standards advises in its memorandum dated November 28, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-2655 Filed 1-31-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Tennessee Center for the Health Sciences; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-199. Applicant: University of Tennessee Center for the Health Sciences, Memphis, TN 38163. Instrument: Mass Spectrometer and Data System, Model VG 7070 E/11-250. Manufacturer: VG Scientific Instruments, United Kingdom. Intended use: See notice at 49 FR 23093.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with Subsection 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (January 20, 1984).

Reasons: The foreign instrument provides a mass range of 1 to 15600 atomic mass units at 1000 electron volts accelerating potential and a scan speed of 0.2 seconds per decade up to mass 2000.

The capability of the foreign instrument described above is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, Subsection 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purpose of comparison with the foreign instrument. Where an applicant, as in this case, received no response to a formal request for quotation sent to the only known domestic manufacturer of a comparable instrument (Nuclide Corporation, which manufactures magnetic sector mass spectrometers), it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 85-2660 Filed 1-31-85; 8:45 am]

BILLING CODE 3510-DS-M

The Trustees of Columbia University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-223. Applicant: The Trustees of Columbia University, New York, NY 10027. Instrument: Mass Spectometer, Model VG MM 707E. Manufacturer: VG Instruments, Inc., United Kingdom. Intended use: See notice at 49 FR 28427.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) a resolution to 25 000 (10% valley); (2) a mass range, at 6000 electron volts accelerating potential, of 1 to 2000 atomic mass units; and (3) a combination of magnetic, electrostatic, and quadrupole analysers for MS/MS studies of daughter ion scans up to 1500 atomic mass units with a minimum cycle time of 0.2 seconds. The National Institutes of Health advises in its memorandum dated September 23, 1984 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-2659 Filed 1-31-85; 8:45 am]

BILLING CODE 3510-DS-M

U.S. Geological Survey; Consolidated Decision on Applications For Duty-Free Entry of ICP Mass Spectrometers

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-280. Applicant: U.S. Geological Survey, Arvado, CO 80002. Intended use: See notice at 49 FR 35398.

Docket No. 84-282. Applicant: Ames Laboratory, Ames, IA 50011. Intended use: See notice at 49 FR 37136.

Instrument: Inductively Coupled Plasma Mass Spectrometer. Manufacturer: Sciex, Canada. Advice submitted by: National Bureau of Standards: November 18, 1984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for such purposes as they are intended to be used, is being manufactured in the United States.

Reasons: The foreign instruments provide an inductively coupled plasma source interfaced with a quadrupole mass spectrometer system capable of both positive and negative ion detection in aqueous samples. The National Bureau of Standards advises in its memoranda that (1) the capability of the foreign instruments described above is pertinent to the applicants' intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instruments for the applicants' intended uses.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instruments which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-2656 Filed 1-31-85; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Determinations on Steel Pipe and Tube; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of requests for short supply determinations under Article 8 of the U.S.-EEC Pipe and Tube Arrangement with respect to line pipe grade 5LX-70 with an outside diameter of 30 inches and a wall thickness of 0.281 inch; line pipe grade 5LX-70 with an outside diameter of 30 inches and a wall thickness of 0.438 inch; line pipe grade 5LX-65 with an outside diameter of 30 inches and a wall thickness of 0.562 inch; and line pipe grade 5LX-60 with an outside diameter of 30 inches and a wall thickness of 0.500 inch.

EFFECTIVE DATE: Comments must be submitted no later than February 15, 1985.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Agreements Compliance Division, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Agreements Compliance Division, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., Washington, D.C. 20230, Room 3087B, (202) 377–4036.

SUPPLEMENTARY INFORMATION: On January 10, 1985, the United States (U.S.) and European Economic Community (EEC) concluded a clarification of the Pipe and Tube Arrangement agreed to on October 21, 1982. The January 10 clarification provides in Article 8 that "* * * the U.S. shall accept exports of pipes and tubes in addition to those permitted under sections 1 and 2 where a shortage of supply is identified, i.e., where the U.S. industry is unable to meet demand in the United States for a particular product." Under the terms of Article 8 the Department "* * * shall make a decision under this section on the basis of objective evidence from all relevant sources."

We have received requests for acceptance under short supply provisions for the following products:

1. Line pipe grade 5LX–70 with an outside diameter of 30 inches and a wall thickness of 0.281 inch.
2. Line pipe grade 5LX–70 with an outside diameter of 30 inches and a wall thickness of 0.438 inch.
3. Line pipe grade 5LX–65 with an outside diameter of 30 inches and a wall thickness of 0.562 inch.
4. Line pipe grade 5LX–60 with an outside diameter of 30 inches and a wall thickness of 0.500 inch.

Any party interested in commenting on these requests should send written comments as soon as possible, and no later than February 15, 1985. Comments should focus on the economic factors involved in granting or denying these requests.

Commerce will maintain these requests and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of their submission and also submit with it a non-confidential submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

January 28, 1985.

[FR Doc. 85–2653 Filed 1–31–85; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals; Western Geophysical Co. of America; Issuance of Letter of Authorization

Notice is hereby given that on January 28, 1985, the National Marine Fisheries Service issued a Letter of Authorization under the authority of section 101(a)(5) of the Marine Mammal Protection Act of 1972 and 50 CFR Part 228, Subpart B—Taking of Ringed Seals Incidental to On-Ice Seismic Activities to the following: Western Geophysical Company of America, 351 East International Airport Road, Anchorage, Alaska 99502–1291.

This Letter of Authorization is valid for 1985 and is subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities (50 CFR Part 228, Subparts A and B).

Issuance of this letter is based on a finding that the total level of taking will have a negligible impact on the ringed seal species or stock, its habitat and its availability for subsistence use.

This Letter of Authorization is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: January 28, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–2629 Filed 1–31–85; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

An ad hoc committee of the Pacific Fishery Management Council will convene a public meeting in Portland, OR, February 7, 1985, to develop minimum by-catch levels for several groundfish species. For further information, contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201; telephone: (503) 221–6352.

Dated: January 28, 1985.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85–2628 Filed 1–31–85; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Levels for Certain Cotton, Wool, and Man-Made Fiber Textile Products From India Effective January 1, 1985; Correction

January 29, 1985.

On December 27, 1984 a notice was published in the **Federal Register** (49 FR 50236) announcing the import levels for certain cotton, wool, and man-made fiber textile products, produced or manufactured in India and exported during 1985. Footnote 2 in the directive of December 21, 1984 to the Commissioner of Customs which followed that notice should be corrected to read as follows:

[2] In Category 359 only TSUSA numbers 379.6410 and 383.5027.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–2664 Filed 1–31–85; 8:45 am]

BILLING CODE 3510–DR–M

Announcing Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products, Produced or Manufactured in the Republic of Korea

January 29, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 4, 1985. For further information contact Ross Arnold, International Trade Specialist (202) 377–4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, the United States Government

has decided to convert to specific limits in 1985 the levels for textile products in Categories 300/301 (yarn), 337 (playsuits), 359pt. (vests), 436 (dresses), 438 (knit shirts and blouses), 459pt. (woven wool hats), and parts of 659 (swimwear and coveralls), which are exported during 1985. The letter to the Commissioner of Customs which follows this notice establishes the new specific limits.

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), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 29, 1985.

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 1, 1982, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 4, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products in the following categories produced or manufactured in Korea, and exported during 1985, in excess of the indicated levels of restraint:

Category	12-month level of restraint [1]
300/301	5,019,858 pounds.
337	35,943 dozen.
359pt.[2]	740,427 pounds.
436	12,983 dozen.
438	61,570 dozen.
459pt.[3]	172,128 pounds.
659pt.[4]	273,684 pounds.
859pt.[5]	427,311 pounds.

[1] The levels have not been adjusted to reflect any imports exported after December 31, 1984.
[2] In Category 359, only TSUSA numbers 379.0258, 379.0654, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200, and 383.4320.
[3] In Category 459, only TSUSA numbers 702.7500 and 702.9000.
[4] In Category 659, only TSUSA numbers 379.2340, 379.3170, 379.9100, 379.9570, 383.1920, 383.2239, 383.8300, 383.8400, and 383.9255.
[5] In Category 659, only TSUSA numbers 379.9605, 379.3325, 383.2005, 383.8605, 383.9210, and 383.2327.

Textile products in the foregoing categories which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1448(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The levels set forth above are subject to adjustment according to the provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, which provide, in part, that: (1) During any agreement year specific limits and sublimits may be exceeded by designated percentages, provided a corresponding reduction in square yards equivalent is made in one or more other specific limits; (2) under specified conditions specific limits and sublimits may be adjusted for carryover and carryforward not to exceed 10 percent; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the foregoing provisions of the agreement will be made to you by letter.

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), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

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 fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-2662 Filed 1-31-85; 8:45 am]

BILLING CODE 3510-DR-M

Extending Visa Requirement To Include Certain Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

January 29, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 5, 1985. For further information contact Eve Anderson, International Trade Specialist (202) 377-4212.

Background

On January 1, 1985, under the terms of the bilateral agreement of November 18, 1982 concerning cotton, wool and man-made fiber textiles and textile products produced or manufactured in Taiwan, the levels for man-made fiber textile products in the following part categories were converted to specific limits for goods exported in 1985.

Category 605—T (thread in TSUSA number 310.9140).

Category 659—S (swimmer in TSUSA numbers 379.2340, 379.3170, 379.9100, 379.9570, 383.1920, 383.2239, 383.8300, 383.8400 and 383.9255).

Category 659—B (bodysuits and body shirts in TSUSA numbers 383.1815 and 383.8022).

Category 659—I (infants' sets in TSUSA numbers 383.2042, 383.2350, 383.8650 and 383.9261).

Accordingly, in the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs to further amend the directive of September 27, 1972, as amended, to require export visas for man-made fiber textile products in the foregoing part categories, effective on February 5, 1985 for goods exported on and after that date.

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), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 29, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of September 27, 1972, as amended, which established an export visa requirement for certain cotton, wool and man-made fiber textile products produced or manufactured in Taiwan. Effective on February 5, 1985, the export visa requirement is hereby extended to include man-made fiber textile products in the following part categories, produced or manufactured in Taiwan and exported on and after February 5, 1985:

Category 605-T (thread in TSUSA number 310.9140).

Category 659-S (swimwear in TSUSA numbers 379.2340, 379.3170, 379.9100,

379.9570, 383.1920, 383.2239, 383.8300, 383.8400 and 383.9255).

Category 659–B (bodysuits and body shirts in TSUSA numbers 383.1815 and 383.8022).

Category 659–I (infants' sets in TSUSA numbers 383.2042, 383.2350, 383.8650 and 383.9281).

Textile products in the foregoing part categories which have been exported before February 5, 1985 shall not be denied entry for lack of a visa.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–2865 Filed 1–31–85; 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 338 (Men's and Boys' Knit Suits)

January 29, 1985.

On December 31, 1984 the Government of the United States requested consultations with the Government of the Republic of Indonesia with respect to men's and boys' knit shirts in Category 338. 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, 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 110,569 dozen for the entry and withdrawal from warehouse for consumption of textitle products in Category 338, produced or manufactured in Indonesia and exported to the United States during the period which began on December 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 had decided, pending agreement on a mutually satisfactory solution, to control imports in this category during the 90-day consultation period (December 31, 1984—March 31, 1985) at a level of 64,676 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 level to be established for the period which began on December 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), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Anyone wishing to comment or provide data or information regarding the treatment of Category 338 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 this category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenhan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 2030. 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, US. 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."

Effective date: February 5, 1985.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Indonesia—Market Statement

Category 338—Cotton Knit Shirts, Men's and Boys'

December 1984.

U.S. imports of Category 338 from Indonesia were 204,900 dozen for year ending October 1984, up 470% from the year ending October 1983 level of 36,200 dozen. This amount is close to 15 times the 1982 level of 14,000 dozen. Imports from Indonesia of Category 338 accounted for 0.4 percent of total imports in 1983. By 1984 they had jumped to almost 2%. This sharp rise contributed to, and far outpaced, the overall growth in imports of 27% for Category 338 during this same time period. Cotton knit shirts from Indonesia are imported at a duty-paid value far below U.S. producers' prices for comparable shirts. This rapid growth in imports from Indonesia, if continued, creates a real threat of market disruption in a sector already adversely affected by imports.

Committee for the Implementation of Textile Agreements

January 29, 1985.

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 in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 5, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 338, produced or manufactured in Indonesia and exported during the ninety-day period which began on December 31, 1984 and extends through March 31, 1985, in excess of 64,676 dozen.[1]

Textile products in Category 338, which have been exported to the United States prior to December 31, 1984 shall not be subject to this directive.

Textile products in Category 338 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 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754) and November 9, 1984 (49 FR 44782).

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 this action falls within the foreign affairs

[1] The level of restraint has not been adjusted to reflect any imports exported after December 30, 1984.

exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-2666 Filed 1-31-85; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of India To Review Trade in Category 310/318 (Cotton Gingham and Other Yarn-Dyed Fabrics)

January 29, 1985.

On December 31, 1984, the Government of the United States requested consultations with the Government of India with respect to cotton gingham and other yarn-dyed fabrics in Category 310/318, produced or manufactured in India. This request was made on the basis of Paragraph 16 of the Agreement between the Governments of the United States and India relating to trade in Cotton, Wool and Man-Made Fiber Textiles and Textile Products of December 21, 1982, which provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The Government of the United States has decided, until such time as a mutually satisfactory solution is reached in consultations, to control imports in this category of goods exported during the 90-day consultation period which began on December 31, 1984 and extends through March 30, 1985 at a level of 1,167,178 square yards.

In the event the level established for Category 310/318 during the ninety-day period is exceeded, such excess amounts, if they are allowed to enter at the end of the restraint period, shall be charged to a limit which may be established later.

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), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Effective Date: February 4, 1985.

Anyone wishing to comment or provide data or information regarding the treatment of Category 310/318 under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of India, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in this 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, 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."

Supplementary Information: On December 27, 1984 a letter was published in the **Federal Register** (49 FR 59236) to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain categories of cotton, wool and man-made fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1985. In the letter published below, pursuant to the terms of the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, pending agreement on a different solution, to prohibit entry for consumption or withdrawal from warehouse for consumption of cotton textile products in Category 310/318, exported during the indicated ninety-day period, in excess of the designated level of restraint.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

India—Market Statement

Category 310/318—Gingham and Other Yarn-Dyed Fabrics

December 1984.

U.S. imports of Categories 310 and 318 from India were 4,275,000 square yards during the year ending October 1984. This compares with 701,000 square yards a year earlier. Imports for the first ten months of 1984 were 4,113,000 square yards, nearly seven times the quantity imported during January–October 1983. During the first ten months of 1984, India accounted for 9.8 percent total imports of Categories 310 and 318. Imports from India are practically all in Category 318. India was the fourth largest supplier of Category 318 during the first ten months of 1984, accounting for 15.0 percent of the total imports.

The U.S. industry producing yarn-dyed cotton and cotton/polyester blended fabrics has been adversely affected by imports in 1984. Imports of these fabrics were up 82 percent during the first nine months of 1984 when compared with a year earlier. Domestic production, on the other hand, declined 11.5 percent. The ratio of imports to domestic production doubled from the first three quarters of 1983 to the same period in 1984. The domestic industry's sales were not only adversely affected by the very high increase in fabric imports but also by a substantial increase, 31.4 percent or 14.9 million square yard equivalents, in the imports of apparel items which are identified as yarn-dyed.

Committee for the Implementation of Textile Agreements

January 29, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in India and exported during 1985.

Effective on February 4, 1985, paragraph one of the directive of December 21, 1984 is hereby amended to include a limit of 1,167,178 square yards[1] for cotton textile products in Category 310/318, produced or manufactured in India and exported during the ninety-day period which began on December 31, 1984 and extends through March 30, 1985.

Textile products in Category 310/318, which have been exported to the United States prior to December 31, 1984 shall not be subject to this directive.

Textile products in Category 310/318, 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

[1] The level of restraint has not been adjusted to reflect any imports exported after December 30, 1984.

directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-2663 Filed 1-31-85; 8:45 am]

BILLING CODE 3510-DR-M

Visa Waivers for Certain Cotton Fabrics

January 29, 1985.

The Chairman of the Committee for the Implementaton of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective as of January 1, 1985. For further information contact Philip J. Martello, International Trade Specialist (202) 377-4212.

Background

As of January 1, 1985 the following fabrics have been classified in, and require export visas for, Category 313, instead of Category 320: fabrics (1) wholly or in chief value cotton, combed, with total single yarns per square inch of 150, or less, classifiable in TSUS provisions 320.— through 331.— and provided statistically in items 20 and 34; and (2) wholly or in chief value cotton, carded, containing yarn size before weaving of finer than 29, classified in TSUS provisions 320.—through 331.— and provided statistically in items 34. The U.S. Customs Service is being directed by CITA to charge these fabrics, as appropriate, to the limits as established for Category 320, if exported during the periods cited below.

To facilitate transition to the new requirement, importers entering, or withdrawing goods from warehouse, for consumption in the United States, having export visas for Category 320, can obtain waivers of the new requirement, in the case of item 1, between January 1, 1985 and April 30, 1985, or in the case of item 2, between January 1, 1985 and until further notice by addressing a request to: Office of Textiles and Apparel, International Agreements and Monitoring Division, Room 3110, U.S. Department of Commerce, 14th and Constitution Avenue NW., Attention: Waivers.

The following information should be included:

Port of Entry (indicating whether seaport or airport)
Name and Address of Importer
Name and Telephone Number of Customs Broker
Description of Merchandise
Category and TSUSA Number
Quantity (Units as set out in TSUSA)
Entry Number or Bill of Lading Number
Name of Carrier
Date of Export
Exporter

Information included in any request for a waiver is subject to section 1001 of Title 181 of the U.S. Code, which provides penalties for making false statements to any department of the United States Government.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-2661 Filed 1-31-85; 8:45 am]

BILLING CODE 3510-DR-M

Controlling Imports of Certain Wool Textile Products Produced or Manufactured in Uruguay

January 30, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in I.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 1, 1985. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Background

On November 28, 1984 a notice was published in the Federal Register (49 FR 46788), which announced that the governments of the United States and the Republic of Uruguay had exchanged notes amending their Bilateral Wool Textile Agreement of December 30, 1983 and January 23, 1984 to establish, among other things, a new specific limit of 1,700,000 square yards for woolen and worsted fabric in Category 410, produced or manufactured in Uruguay and exported during the period which began on February 1, 1984 and extended through January 31, 1985. The agreement, as amended, provides for a limit of 1,717,000 square yards during the twelve-month period which began on February 1, 1985 and extends through January 31, 1986. The letter to the Commissioner of Customs which follows this notice establishes the new limit.

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 26822), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 30, 1985.

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 Wool Textile Agreement of December 30, 1983 and January 23, 1984, as amended and extended, between the Governments of the United States and Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 410, produced or manufactured in Uruguay and exported during the twelve-month period which began on February 1, 1985 and extends through January 31, 1986, in excess of 1,717,000 square yards.[1]

In carrying out this directive entries of wool textile products in Category 410, produced or manufactured in Uruguay, which have been exported to the United States on and after February 1, 1984 and extending through January 31, 1985, shall, to the extent of any unfilled balance, be charged against the limit established of such goods during the twelve-month period. In the event the limit has been exhausted by previous entries, such goods shall be subject to the limit set forth in this letter.

The limit for Category 410 is subject to adjustment in the future according to the provisions of the bilateral agreement, as amended, which provide, in part, that: (1) the specific limit may be adjusted for carryover and carryforward; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

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

[1] The level of restraint has not been adjusted to reflect any imports exported after January 31, 1985.

14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

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 determining that this actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

FR Doc. 85-2667 Filed 1-31-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition for Procurement List.

SUMMARY: This action adds to Procurement List 1985 commodity to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: February 1, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Addition to the Procurement List of the commodity listed below was published in the Federal Register on May 11, 1984 (49 FR 20048). One comment was received in response to that notice. The commentor indicated that his firm had manufactured the item for several years, that the item has been a substantial part of the firm's production schedule, and that due to poor economic conditions of the paper industry in general, removal of the item from competitive bidding would greatly inhibit the firm's efforts to provide employment, pay taxes and support the local economy.

The Committee considered the comment received as well as other pertinent information and determined that the addition will not result in serious adverse impact on the current or most recent contractor for the item involved.

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance listed.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1985:

Class 7530

Book, Memorandum: 7530-00-286-6952

C.W. Fletcher,

Executive Director.

[FR Doc. 85-2651 Filed 1-31-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1985 commodities to be produced and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: February 1, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 3, October 26 and November 26, 1984 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (49 FR 31128, 49 FR 43087 and 49 FR 46458) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and to provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1985:

Class 5340

Strap, Webbing: 5340-00-286-6895

Class 6530

Surgical Pack, Disposable: 6530-01-124-8844

SIC 0782

Grounds Maintenance, Ash Woods, French Drive & Independence Avenue to 17th Street & Independence Avenue, Washington, D.C.

C.W. Fletcher,

Executive Director.

[FR Doc. 85-2649 Filed 1-31-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1985 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: March 6, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the

Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Class 6530

Paper Sheeting, Examination: 6530-01-092-3914

Class 7210

Cover, Mattress: 7210-00-543-6002, 7210-00-140-4233

Class 8465

Bag, Personal Effects: 8465-00-174-0808

SIC 7349

Janitorial/Custodial, Federal Executive Institute, Charlottesville, Virginia

Class 7369

Commissary Shelf Stocking and Custodial Service, Elmendorf Air Force Base, Alaska
Commissary Shelf Stocking and Custodial Service, Moody Air Force Base, Georgia
Commissary Shelf Stocking and Custodial Service, Columbus Air Force Base, Mississippi

C.W. Fletcher,

Executive Director.

[FR Doc. 85-2650 Filed 1-31-85; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Philadelphia Board of Trade; Inc.; National Over-the-Counter Index Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Philadelphia Board of Trade, Inc. ("PHBT") has applied for designation as a contract market in the National Over-the-Counter Index (the "XOC Index"). The Commodity Futures Trading Commission ("Commission") has determined that the terms and conditions of the proposed futures contract are of major economic significance and that, accordingly, making available the proposed contract for public inspection and comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before April 2, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the PHBT XOC Index.

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.

A copy of the terms and conditions of the proposed PHBT XOC Index futures contract 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 the terms and conditions 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 the 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 regulation 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 futures contract, or with respect to other materials submitted by the PHBT in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 20333 K Street, NW., Washington, D.C. 20581, by April 2, 1985.

Issued in Washington, D.C., on January 28, 1985.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85-2591 Filed 1-31-85; 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 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 G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Regulations Governing Bankruptcies of Commodity Brokers
Control Number: 3038-0021
Action: Reinstatement
Respondents: Businesses (excluding small businesses)
Estimated Annual Burden: 802.5 hours
Estimated Number of Respondents: 410.

Issued in Washington, D.C., on January 28, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-2485 Filed 1-31-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

CHAMPUS/CHAMPVA Claim Form 500; CHAMPUS Form 500

The CHAMPUS Form 500 is used by CHAMPUS beneficiaries and health care providers to file for reimbursement of health care services. The requested information is used to determine eligibility, appropriateness and cost of

care, and whether services received are benefits.

Individuals or households, state or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions and small businesses or organizations.

Responses 3,500,000
Burden Hours 1,960,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS (DIOR)/ICD, Suite 1204, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado 80045-6900, telephone (303) 361-3509.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1985.

[FR Doc. 85-2625 Filed 1-31-85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revised

Statement of Personal Injury—Possible Third Party Liability—CHAMPUS/CHAMPVA—CHAMPUS Form 691

The Statement of Personal Injury Possible Third Party Liability Form will be completed by CHAMPUS/CHAMPVA beneficiaries suffering from personal injuries and receiving medical care at Government expense. The information is necessary in the assertion of the Government's right to recovery under the Federal Medical Care Recovery Act. The data will be used in the evaluation and processing of these claims.

Individuals or households and Federal agencies or employees.

Responses 30,000
Burden hours 17,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS(DIOR)/ICD, Suite 1204, 1215 Jefferson Davis Highway, Arlington, Virginia 22202-4302, telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado 80045-6900, telephone (303) 361-3509.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1985.

[FR Doc. 85-2626 Filed 1-31-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems will meet in closed session on 28 February-1 March 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue their study on how to hold Soviet imprecisely located targets at risk.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1985.

[FR Doc. 85-2624 Filed 1-31-85; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, March 5, 1985, Tuesday, March 12, 1985; Tuesday, March 19, 1985 and Tuesday, March 26, 1985 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Installations and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, D.C. 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1985.

[FR Doc. 85-2627 Filed 1-31-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of committee: Armed Forces Epidemiological Board.

Date of meeting: 1 March 1985.

Time: 0800-1600.

Place: Conference Room 3092, Walter Reed Army Institute of Research, Walter Reed Army Medical Center, Washington, DC.

Proposed Agenda

Review of the United States environmental enhancement and protection programs, update report on Agent Orange research efforts, pregnancy outcomes of women in the Armed Forces, United States Navy Asbestos medical surveillance program update, leishmaniasis outbreak in Panama, immunodeficiency syndrome review, hepatitis in naval forces during deployment, military services preventive medicine officer reports, respective subcommittee(s) report and business meeting.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 2D455, Pentagon, Washington, DC 20310-2300, (202) 695-9115.

Dated: 18 January, 1985.

Robert F. Nikolewski,

COL, USAF, BSC, Executive Secretary.

[FR Doc. 85-2642 Filed 1-31-85; 8:45 am]

BILLING CODE 3710-08-M

Armed Forces Epidemiological Board, Subcommittee on Disease Control; Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of committee: Armed Forces Epidemiological Board Subcommittee on Disease Control.

Date of meeting: 28 February 1985.

Time: 1000-1500 hours.

Place: Conference Room 3092, Walter Reed Army Institute of Research, Walter Reed Army Medical Center, Washington, DC.

Proposed Agenda

Disposition of military personnel identified as hepatitis B carriers; disinfection overview programs with particular attention to the immunodeficient patient.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 2D455, Pentagon, Washington, DC 20310-2300, (202) 695-9115.

Dated: 18 January, 1985.

Robert F. Nikolewski,

COL, USAF, BSC, Executive Secretary.

[FR Doc. 85-2643 Filed 1-31-85; 8:45 am]

BILLING CODE 3710-08-M

Military Personal Property Claims Symposium; Open Meeting

Announcement is made of a meeting of the Military Personal Property Claims Symposium. This meeting will be held on 21 February 1985 at Headquarters, Military Traffic Management Command, NASSIF Building, 5611 Columbia Pike, Falls Church, Virginia, and will convene at 0930 hours and adjourn at approximately 1500 hours.

Proposed Agenda

The purpose of the Symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation (DOD 4500.34-R), and the handling of other matters of mutual interest relating to claims actions concerning the Department of Defense Personal Property Movement and Storage Program. All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 756-1600, between 0800-160 hours. Topics to be discussed should be received on or before 11 February 1985.

Dated: January 22, 1985.

Nathan R. Berkley,

Colonel, GS, Director of Personal Property.

[FR Doc. 85-2641 Filed 1-31-85; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Directorate of Personal Property; Carrier Evaluation and Reporting System (CERS) Cut-off Scoring Date

AGENCY: Military Traffic Management Command (MTMC), DoD.

ACTION: Notice of announcement.

SUMMARY: New cut-off dates for interstate shipments will be March 15 and September 15. Cut-off dates for intrastate shipments will be February 15 and August 15. This change gives transportation offices an additional 15 days to adjust scores prior to the start of the next performance period and still allows carriers 30 days to appeal a score. Change is effective January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Wells, HQ, Military Traffic Management Command, ATTN: MT-PPQ, 5611 Columbia Pike, Falls Church, Virginia 22041-5050.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85-2640 Filed 1-31-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitation Services

Discretionary Grant Programs; Closing Dates

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Dates for Transmittal of Certain Fiscal Year 1985 Noncompeting Continuation Applications.

SUMMARY: The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and closing dates for transmittal of applications for noncompeting continuation projects for certain programs administered by the Department of Education under the Office of Special Education and Rehabilitation Services.

Organization of Notice

This notice contains two parts. Part I includes, in chronological order, the list of all closing dates covered by this

notice. Part II consists of the individual application announcements for each program. These announcements are in the same order as the closing dates listed in Part I.

Instructions for Transmittal of Applications

Applicants should note specifically the instructions for the transmittal of applications included below:

Transmittal of Applications: In order to be assured of consideration for funding, applications for noncompeting continuation projects should be mailed or hand delivered on or before the closing date given in the individual program annoucements included in this document.

If a noncompeting continuation application is late, the U.S. Department of Education may lack sufficient time to review it with other noncompeting continuation applications may decline to accept it.

Applications Delivered by Mail: An applications sent by mail must be addressed to the Department of Education Application Control Center, Attention: (appropriate CFDA No.), 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 evidence of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand: An application that is hand delivered must be taken to the Department of Education Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available Funds: In each application announcement, under the paragraph on availability of funds, the estimates of funding levels do not bind the Department to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Part I—Programs Listed in Chronological Order

CFDA No.	Program	Closing Date
84.128B	Projects with industry	March 15, 1985
84.128A	Special projects and demonstrations for providing vocational rehabilitation services to severely handicapped individuals.	March 15, 1985

Part II—Application Announcements for Each Program

84.128B—Projects With Industry

Closing Date: Noncompeting Continuations March 15, 1985.

Authority for this program is contained in section 621 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 795g).

Agreements are made under this program with employers and profitmaking and nonprofit organizations including any industrial, business or commercial enterprise; labor organization; community trade association; rehabilitation facility; or any other agency or organization with the capacity to arrange, coordinate or conduct training and other employment programs and provide supportive services and assistance to handicapped individuals in a realistic work setting.

The purpose of this program is to provide handicapped individuals with training, employment and supportive services and assistance within business, industry, or other realistic work settings in order to prepare them for competitive employment and to permit them to maintain their employment.

Available Funds: The total amount of funds available under this program in Fiscal Year 1984 was $13,000,000. It is estimated that $14,400,000 will be available in Fiscal Year 1985 to provide for the continuation of 98 projects and for the adjustment of project periods of certain existing projects in order to provide for the funding of all existing projects through September 30, 1986. Section 621(e) of the Rehabilitation Act of 1973, as amended, requires the funding of current projects through September 30, 1986 unless the Commissioner of the Rehabilitation Services Administration determines that there is a substantial failure to comply with the provisions of the approved agreement.

Application Forms: Application forms and program information will be mailed to grantees who are eligible to apply for noncompeting continuation support under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is 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 requirement beyond those specifically imposed under the statute and regulations.

The Secretary urges that the narrative portion of applications not exceed 15 pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under control number 1820-0018)

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Projects with Industry Program (34 CFR Parts 369 and 379); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further Information: Harold F. Shay, Division of Special Projects, Rehabilitation Services Administration, U.S. Department of Education, Room 3317, Mary E. Switzer Building, 400 Maryland Avenue, SW., (MS-2312) Washington, D.C. 20202. Telephone (202) 732-1325.

84.128A—Special Projects and Demonstrations for Providing Vocational Rehabilitation Services To Severely Handicapped Individuals

Closing Date: March 15, 1985.
Noncompeting Continuations

Authority for this program is contained in section 311(a)(1) of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 777a(a) (1)).

Awards are made under this program to States and public and other nonprofit agencies and organizations.

The purpose of this program is to support projects designed to expand or otherwise improve vocational rehabilitation services and other services for severely handicapped individuals.

Available Funds: The total amount of funds awarded under this program in Fiscal Year 1984 was approximately $5,735,000 for both new and continuation projects. It is estimated that $5,464,000 will be available to provide for the continuation funding of 46 projects in Fiscal Year 1985.

Application Forms: Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting continuation grant support under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is 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 requirement beyond those specifically imposed under the statute and regulations.

The Secretary urges that the narrative portion of the application not exceed 15 pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under control number 1820-0018)

Applicable Regulations: The following regulations are applicable to this program:

(a) Regulations governing Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals (34 CFR Parts 369 and 373); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

Further Information: Harold F. Shay, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3330, Mary E. Switzer Building, Washington, DC 20202. Telephone (202) 732-1325.

(29 U.S.C. 777(a)(1) and 795g)

(Catalog of Federal Domestic Assistance No. 84.128, Vocational Rehabilitation Service Projects.)

Dated: January 29, 1985.

Madeleine Will,

Assistant Secretary, Special Education and Rehabilitative Services.

[FR Doc. 85-2596 Filed 1-31-85; 8:45 am]

BILLING CODE 4000-01-M

Discretionary Grant Programs; Closing Dates

AGENCY: Department of Education.

ACTION: Application notice establishing closing dates for transmittal of certain fiscal year 1985 applications for new awards.

SUMMARY: The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and closing dates for transmittal of grant applications for new awards for certain programs administered by the Department of Education under the Office of Special Education and Rehabilitative Services.

Organization of Notice

This notice contains two parts. Part I includes, in chronological order, the list of all closing dates covered by this notice. Part II consists of the individual application announcements for each program. These announcements are in the same order as the closing dates listed in Part I.

Instructions for Transmittal of Applications

Applicants should note specifically the instructions for the transmittal of applications included below:

Transmittal of applications: Applications for all projects must be mailed or hand delivered on or before the closing date given in the individual program announcements included in this document.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: (insert appropriate CFDA number), 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, 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 for a new award will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C. 20202.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: In each application announcement, under the paragraph on availability of funds, the estimates of funding levels do not bind the Department to a specific number of grants or to the amount of any grant, unless the amount is otherwise specified by statute or regulations.

Part I—List of Program Application Announcements Published in This Notice

CFDA No.	Program	Closing date
84.128H	Handicapped American Indian Vocational Rehabilitation Service Projects.	Apr. 29, 1985.
84.128J	Projects for Initiating Special Recreation Programs for Handicapped Individuals.	May 6, 1985.
84.128G	Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects.	May 1, 1985.

Part II—Application Notices

84.128H—Handicapped American Indian Vocational Rehabilitation Service Projects

Closing Date: April 29,1985.

Applications for new projects are invited under the Handicapped American Indian Vocational Rehabilitation Service Projects Program.

Authority for this program is contained in section 130 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 750).

Awards are made under this program to the governing bodies of Indian tribes located on Federal and State reservations.

The purpose of the Handicapped American Indian Vocational Rehabilitation Service Projects Program

is to support projects designed to provide vocational rehabilitation services to handicapped American Indians who reside on Federal or State reservations in order to prepare them for suitable employment

Available Funds: The total amount of funds awarded under this grant program for Fiscal Year 1984 was $715,000. It is estimated that $715,000 will be available in Fiscal Year 1985 to support three new projects. The range of funded projects is expected to be from approximately $215,000 to $500,000.

It is expected that new projects funded under this program in Fiscal Year 1985 will be approved for project periods of to 36 months.

Application Forms: Application forms and program information packages are available and may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, Office of Special Education and Rehabilitation Services, U.S. Department of Education, Room 3329, Mary E. Switzer Building, 400 Maryland Avenue, SW., (MS 2312) Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is 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 requirement beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages in length. The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1820-0018)

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Handicapped American Indian Vocational Rehabilitation Service Projects Program (34 CFR Parts 369 and 371); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

For Further Information Contact: Harold F. Shay, Division of Special Projects, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 3317, Mary E. Switzer Building 400 Maryland Avenue, SW., (MS 2312) Washington, D.C. 20202. Telephone: (202) 732-1325.

(29 U.S.C. 750)

84.128J—Projects for Initiating Special Recreation Programs for Handicapped Individuals

Closing Date: May 6, 1985.

Applications for new projects are invited under the Projects For Initiating Special Recreation Programs for Handicapped Individuals program.

Authority for this program is contained in section 316 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 777 f)

Awards are made under this program to State and public and other nonprofit agencies and organizations.

The purpose of this program is to support projects which initiate recreational service programs for handicapped individuals.

Program Information: Handicapped individuals served in projects supported under this program are expected to be individuals who might be eligible for vocational rehabilitation services from State vocational rehabilitation agencies.

Available Funds: The total amount of funds awarded under this grant program for Fiscal Year 1985 was $2,000,000. It is estimated that up to $2,100,000 will be available to support new projects in fiscal year 1985 with an average project totalling $75,000.

It is expected that new projects funded under this program in Fiscal Year 1985 will be approved for project periods of up to 12 months.

Application Forms: Application forms and program information packages are available and may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 3329, Mary E. Switzer Building, 400 Maryland Avenue SW., (MS 2312), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is 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 requirement beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages in length. The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1820-0018)

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations Governing Projects For Initiating Special Recreation Programs For Handicapped Individuals (34 CFR Parts 369 and 378); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

For Further Information Contact: Harold F. Shay, Division of Special Projects, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 3317, Mary E. Switzer Building, 400 Maryland Avenue SW., (MS 2312) Washington, D.C. 20202. Telephone: (202) 732-1325.

(29 U.S.C. 750)

84.128G—Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects

Closing Date: May 1, 1985.

New applications are invited under the Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects program.

Authority for this program is contained in section 312 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 777b)

Awards are made under this program to State vocational rehabilitation agencies or to local agencies that have agreements in effect with State vocational rehabilitation agencies to conduct vocational rehabilitation programs under the supervision of the State agencies in accordance with State plans approved under Section 101 of the Act.

The purpose of this program is to support projects for providing vocational rehabilitation service to handicapped migratory agricultural workers or handicapped seasonal farmworkers.

Intergovernmental Review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 et seq.) implementing Executive Order 12372 entitled: "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The

objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is a current list of States that have established a process, designated a single point of contact, and have selected this program for review:

Alabama
Arizona
Arkansas
California
Connecticut
Delaware
District of Columbia
Hawaii
Illinois
Indiana
Kansas
Louisiana
Maine
Maryland
Massachusetts
Michigan
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
Wisconsin
Wyoming
Guam
Virgin Islands
Northern Mariana Islands
Trust Territory

Immediately upon receipt of this notice, applicants which are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should, immediately upon receipt of this notice, contact the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide regional, and local entities for 84.128G, Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects, must be mailed or hand delivered by July 1, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181 (84.128G), 400 Maryland Avenue, SW., Washington, D.C. 20202.

(Proof of mailing will be determined on the same basis as applications).

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS APPLICATION. DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.

Available Funds: The total amount of funds available under this grant program for Fiscal Year 1984 was $950,000. It is estimated that $950,000 will be available in Fiscal Year 1985 of which approximately $350,000 will be used for the support of new projects. An estimated three new projects will be awarded with the average grant totalling $117,000.

It is expected that new projects funded under this program in Fiscal Year 1985 will be approved for project periods of up to 36 months.

Application Forms: Application forms and program information packages are available and may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services, U.S. Department of Education, 400 Maryland Avenue SW., (MS 2312) Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this announcement. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages in length. The Secretary further urges that applicants not submit information that is not requested.

(Approved by the Office of Management and Budget under control number 1820-0018)

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects Program (34 CFR Parts 369 and 375); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR parts 74, 75, 77, 78 and 79).

For Further Information Contact: For further information, contact Harold F. Shay, Division of Special Projects, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education (Room 3317, Mary E. Switzer Building), (MS 2312) 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 732-1325.

(29 U.S.C. 750)

(Catalog of Federal Domestic Assistance No. 84.128, Vocational Rehabilitation Service Projects)

Dated: January 29, 1985.

Madeleine Will,

Assistant Secretary, Special Education and Rehabilitative Services.

[FR Doc. 85-2597 Filed 1-31-85; 8:45 am]

BILLING CODE 4000-01-M

National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs; Appeals Deadline

AGENCY: Department of Education.

ACTION: Notice of deadline date for submitting appeals for funds; and notice of average program expenditures by type of institution.

SUMMARY: The Secretary gives notice of the deadline date for institutions of higher education wishing to file appeals of their initial allocations of funds (tentative awards) for award year 1985-86 under the National Direct Student Loan (NDSL), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs. Under these programs, the Secretary allocates funds to institutions for students who need financial aid to meet the cost of postsecondary education.

The Secretary also announces the average 1983-84 expenditure of funds per enrolled student for the NDSL, CWS,

and SEOG Programs by type of institution. The Secretary uses these average expenditures in calculating the 1985–86 NDSL, CWS, or SEOG award of an institution that is participating in that program for the first or second time.

The NDSL, CWS, and SEOG Programs are authorized by Parts E, C, and Subpart A–2, respectively, of title IV of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1087aa–1087ii, 42 U.S.C. 2751–2756b; and 20 U.S.C. 1070b–1070b–3)

Closing date for transmittal of appeals: The deadline date for an institution of higher education to submit an appeal of its 1985–86 tentative NDSL, CWS, or SEOG award is March 4, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Alberta Mack, Division of Program Operations, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4621, ROB–3), Washington, D.C. 20202. Telephone (202) 245–2432.

SUPPLEMENTARY INFORMATION: An institution that wishes to participate in the NDSL, CWS, or SEOG Program must submit an application for funds to the Secretary before an established closing date. The information the institution provides on the application is evaluated according to the appropriate funding criteria to determine the institution's appropriate funding level. Each institution is informed of its funding level. However, the regulations for each of these programs permit an institution to appeal its funding level.

Regulations containing the procedures for calculating institutional awards and appeals of those awards are contained in 34 CFR 674.7 for the NDSL program, 34 CFR 675.7 for the CWS program, and 34 CFR 676.7 for the SEOG program.

Average 1983–84 Expenditure of Funds Per Enrolled Student by Program and Type of Institution

Listed below are the types of institutions and the average program expenditure per enrolled student for each type of institution. The Secretary uses this information to calculate the 1985–86 award of an institution that is participating in the NDSL, CWS, or SEOG program for the first or second time.

Type of institution	NDSL expenditure	SEOG	CWS Federal share
Cosmetology	$91	$74	$9
Business	88	65	33
Trade and technical	80	64	31
Art	90	82	65
Other proprietary	80	64	31
Other non-proprietary	89	27	43

Appeals Delivered by Mail

An appeal sent by mail must be addressed to Appeals, NDSL/CWS/SEOG, Post Office Box 23914, L'Enfant Plaza, Washington, D.C. 20026.

An institution must show proof of mailing its appeal by the deadline date. Proof of mailing must consist of one of the following:

(1) A legible receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(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 appeal 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 institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

An institution is encouraged to use registered or at least first-class mail.

Appeals Delivered by Hand

An appeal that is hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations, Campus-Based Programs Branch, Room 4621, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C. The Campus-Based Programs Branch will accept hand-delivered appeals between 8:00 a.m. and 4:30 p.m. daily (Eastern Standard Time) except Saturdays, Sundays, and Federal Holidays.

An appeal that is hand-delivered will not be accepted after 4:30 p.m. on March 4, 1985.

Applicable Regulations

The following regulations apply to the campus-based programs:

34 CFR Part 668—Student Assistance General Provisions.

34 CFR Part 674—National Direct Student Loan Program.

34 CFR Part 675—College Work-Study Program.

34 CFR Part 676—Supplemental Educational Opportunity Grant Program.

(20 U.S.C. 1087aa–1037ii, 42 U.S.C. 2761–2756b; and 20 U.S.C. 1070b–1070b–3)

(Catalog of Federal Domestic Assistance No. 84–038, National Direct Student Loan Program; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grant Program)

Dated: January 30, 1985.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84–2795 Filed 1–31–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Wholesale Power Rate Schedules; Proposal To Implement the Industrial Incentive Rate for the Direct-Service Industrial Customers

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and request for comments.

BPA File No: INCENT–2

SUMMARY: On January 23, 1985, BPA proposed implementation of the Industrial Incentive Rate for BPA's direct-service industrial customers (DSIs) as provided in BPA's 1983 Wholesale Power Rate Schedules. The market price for aluminum has deteriorated to the point where several DSIs are expected to curtail production from current levels beginning in March 1985. In an effort to maintain as much of the existing load as possible, BPA has investigated whether BPA's revenues would increase as a result of implementation of the Industrial Incentive Rate. Based on the results of this study, BPA proposes adopting an Incentive Rate approximately equal to a 6-mill per kilowatthour discount from the Standard Industrial Rate. If adopted, the Industrial Incentive Rate would become effective for a 4-month period beginning March 1, 1985, and would be applied on a take-or-pay basis to the loads of those DSIs who elect to purchase under this arrangement. BPA proposes to implement the Industrial Incentive Rate only if the DSIs commit to purchasing at least 2131 megawatts of Industrial Firm Power. BPA has provided notice of this proposed action to its customers as required by BPA's General Rate Schedule Provisions (GRSPs).

Responsible Official: Janet W. McLennan, Assistant Power Manager for Natural Resources and Public Services, is the official responsible for implementation of the Industrial Incentive rate.

DATE: A Public Information and Comment Forum on this proposal will be held from 1–4 p.m., Friday, February 8, in Room 464 of the BPA Headquarters

Building located at 1002 NE. Holladay, Portland, Oregon.

ADDRESSES: Address comments to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Written comments must be received by 5 p.m. on February 13, 1985, in order to be considered in determining the appropriateness of implementing the Industrial Incentive Rate.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Baker, Public Involvement office, at the address listed above. Telephone numbers, voice/TTY for the Public Involvement Office are: 503–230–3478 in Portland; toll-free 800–452–8429 for Oregon outside of Portland; 800–547–6048 for Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952

Mr. Wayne R. Lee, 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, 406–329–3060

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, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4131

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Popular, Walla Walla, Washington 99362, 509–434–6226, extension 701

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 Street, Boise, Idaho 83707, 208–334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

The Industrial Incentive rate is a reduced rate designed to increase BPA's revenues during periods of adverse market conditions for the aluminum industry over those revenues which would otherwise be expected to result from application of BPA's Standard Industrial rate. The rate also is intended to stimulate industrial production and maintain employment in the Pacific Northwest. Under the terms of the GRSPs, the Industrial Incentive rate can be offered to the DSIs only if BPA can demonstrate that the net result of implementing the rate would be to increase total BPA revenues.

In September 1984, BPA implemented the Industrial Incentive rate for the first time. This Incentive rate, averaging 22.7 mills per kilowatthour, represented a discount of approximately 5 mills from the Standard Industrial rate. This existing Incentive rate expires on February 28, 1985. Given the economic conditions which the DSIs currently face, BPA is considering the advisability of making another Incentive rate offer—this time for the period March 1 through June 30, 1985.

For the week ending January 11, 1985, the U.S. Market price for aluminum was 49.3 cents per pound as contrasted to the January 1984 price of slightly more than 77 cents per pound. The January 1985 price was even lower than the U.S. Market price at the time BPA implemented its first Industrial Incentive rate on September 1, 1984. In response to reduced prices for their products and high worldwide inventories, several of BPA's industrial customers are expected to curtail production following the expiration of the current Incentive rate on February 28, 1985. BPA is concerned about the effect of such curtailments on its revenues and believes that implementation of another Industrial Incentive rate may arrest this trend before it seriously erodes BPA's revenues.

BPA has conducted a feasibility study which concludes that it is appropriate to propose implementing another Industrial Incentive rate following expiration of the Industrial Incentive rate currently in effect. In conducting this study, BPA used various computer programs to determine whether total BPA revenues would be greater under the Standard Industrial rate or an Incentive rate.

II. Proposal

BPA is proposing to adopt an Industrial Incentive rate which would result in a 6-mill per kilowatthour discount from the Standard Industrial rate. BPA is proposing that the rate be in effect for a 4-month period, beginning March 1, 1985. The GRSPs require any Incentive rate to be in effect for at least 6 months unless the end of the rate period comes first. Since BPA is expecting to file new rates effective July 1, 1985, this proposal would apply to the 4-month period beginning March 1 and ending June 30, 1985.

BPA's proposal stipulates that any offer of the Industrial Incentive Rate be conditioned on a total DSI take-or-pay commitment level averaging at least 2131 megawatts over the 4-month period. Under a 6-mill discount at a committed load of 2131 megawatts, BPA would expect to earn almost 1 million dollars more than would be earned were the Standard Industrial rate to remain in effect.

With respect to the industrial floor rate, the power sales contract for this Incentive rate power will include the following language *"Industrial Floor rate."* In accordance with the Administrator's Record of Decision on the 1983 Final Rate Proposal (WP–83–A–02, p. 268, September 1983), the "floor rate" explained in section 7(c)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(c)(2), shall not be based on the Industrial Incentive rate under this Agreement. In consideration of this Incentive rate offer by Bonneville, the undersigned DSI agrees not to contest the use of the load forecast currently contained in Bonneville's supplemental rate case forecast for the period March through June 1985 times the Standard Industrial Power rate to determine the 4-month component of the 7(c)(2) floor rate, to the extent that the floor rate is based on operating year 1985 loads. This Section 8 is not severable from the remainder of this Agreement, unless the section is held to be unlawful by the United States Court of Appeals for the Ninth Circuit."

Copies of the feasibility study are available from the BPA Public Involvement office listed under **ADDRESSES.**

III. Receipt of Comments

BPA is now accepting public comment on its proposed implementation of the Industrial Incentive rate. BPA will accept both oral and written comment at the Public Information and Comment Forum listed under **DATES.** BPA will accept written comment received by 5 p.m. on February 13, 1985, at the address listed above. Comments received by the Public Involvement Manager or presented at the Public Information and Comment Forum will be considered in determining the appropriateness of BPA's implementing the Industrial Incentive rate. Should BPA adopt an Incentive rate for the period March 1 through June 30, 1985, BPA will publish a notice of its final action on this matter in the **Federal Register** after March 1, 1985.

Issued in Portland, Oregon, on January 23, 1985.

James J. Jura,

Acting Administrator.

[FR Doc. 85–2623 Filed 1–31–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 83-07-NG]

Natural Gas Imports/Exports; Great Lakes Transmission Co.; Order To Amend Authorization

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order amending authorization to import and export Canadian natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on January 23, 1985, the ERA Administrator issued an Opinion and Order approving Great Lakes Transmission Company's (Great Lakes) application to amend its authorization to import and export Canadian natural gas from and to TransCanada Pipelines Limited (TransCanada). The approval authorizes Great Lakes to import and export up to 815,000 Mcf of natural gas per day from November 1, 1992, when its current authority expires, to November 1, 2005.

The text of the Opinion and Order follows.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9590

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6667.

Issued in Washington, D.C., on January 24, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

UNITED STATES OF AMERICA

Department of Energy—Economic Regulatory Administration

Great Lakes Transmission Co.; Order Extending Authorization To Import and Export Canadian Natural Gas

[DOE/ERA Opinion and Order No. 70]

January 23, 1985.

I. Background

On October 26, 1983, Great Lakes Transmission Company (Great Lakes) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to section 3 of the Natural Gas Act, to amend the term of its current authorization to import and export up to 815,000 Mcf of natural gas per day from and to TransCanada Pipelines Limited (TransCanada).[1] The amendment would permit Great Lakes to continue to import and export natural gas for the account of TransCanada from November 1, 1992, when its current authority expires, to November 1, 2005.

Great Lakes supplemented its ERA filing on April 13, 1984, in response to the policy guidelines on natural gas imports issued by the Secretary of Energy on February 15, 1984,[2] to state that the policy did not apply to its import. Pursuant to the procedural order accompanying the policy statement,[3] Great Lakes on December 12, 1984, requested that the ERA process its application to extend its authorization.

Great Lakes operates a pipeline system extending from the international boundary near Emerson, Manitoba, the point at which it connects with the facilities of TransCanada, across northern Minnesota, Wisconsin, and Michigan, until it reconnects with TransCanada's eastern Canadian facilities at two points on the international boundary near St. Clair and Sault Ste. Marie, Michigan. Under an agreement dates September 12, 1967, as amended, Great Lakes supplies transportaton services for TransCanada.

Great Lakes was initially granted authority to import and export Canadian natural gas by the Federal Power Commission (FPC) in Order No. 521, issued on June 20, 1967, in Docket No. CP66-112,[4] and later amended by the FPC on June 1, 1971, in Docket No. CP71-223.[5] On September 8, 1981, Great Lakes and TransCanada amended their transportation agreement to extend its term through October 31, 2005. Great Lakes is currently authorized to import into and export from the United States up to 815,000 Mcf per day of Canadian natural gas to be transported for the account of TransCanada. The gas is delivered by TransCanada to Great Lakes at Emerson. Great Lakes returns the equivalent volumes to TransCanada at Sault Ste. Marie and St. Clair for sale in Canadian markets.

Great Lakes states that gas shipments for TransCanada represent nearly 55 percent of its system throughout, which makes it heavily dependent on TransCanada as a source of revenue. Great Lakes contends that extension of the contract with TransCanada is a necessary condition for continued short and long-term financing of its operation. Based on the downstream revenues the extended contract would provide, Great Lakes expects the extension to enhance greatly its ability to finance additional construction, make improvements to its system, and ensure adequacy of service.

Great Lakes submits that the volumes transported for TransCanada have enabled it to provide free gas exchange services to some of its customers. Great Lakes asserts that this service gives it greater flexibility to direct the flow of gas within its system and avoids the necessity of either backhauling gas on existing facilities or constructing additional transportation facilities.

According to Great Lakes, extension of its current authorization would provide several other benefits. The greatest benefit would be that Great Lakes' capacity will continue to be fully utilized which will help minimize rates for all customers. Great Lakes further submits that approval of its application would be in the public interest since no domestic supply of gas exists in the area served by Great Lakes which could replace the volumes being transported for TransCanada.

II. Interventions and Comments

Notice of Great Lakes' application was issued on January 30, 1984, and published in the Federal Register on February 6, 1984,[6] inviting protests, motions to intervene, or notices of intervention and written comments. The notice provided a 30-day public response period ending March 7, 1984. No responses were received.

III. Decision

Great Lakes' application has been evaluated to determine if extension of the import and export arrangement meets the public interest requirements of section 3 of the Natural Gas Act. Under section 3, imports and exports are to be authorized unless there is a finding that they "will not be consistent with the public interest."[7] The Administrator is guided by the Secretary of Energy's policy relating to the regulation of natural gas imports, and by Delegation Order No. 0204-111.[8] With respect to imports, under the policy guidelines the competitiveness of the arrangement is the primary consideration for meeting the public interest test, with security of the supply and need being other considerations. The primary

[1] 49 FR 4428, February 6, 1984.
[2] 49 FR 6684, February 22, 1984.
[3] 49 FR 6691, February 22, 1984.
[4] 37 FPC 1070.
[5] 45 FPC 1037.
[6] 49 FR 4428, February 6, 1984.
[7] 15 U.S.C. 717b.
[8] 49 FR 6690, February 22, 1984.

consideration bearing on exports is the lack of domestic need for the gas.

The competitiveness of Great Lakes' arrangement is not an issue in this case because the volumes being imported are redelivered to Canada and are not sold to U.S. consumers. Inasmuch as the volumes are being imported and exported for TransCanada's account and are not sold on the U.S. market, the only relevant issue is the impact of the import and export on Great Lakes and its customers.

Great Lakes contends that no domestic supply of gas exists in its market area that could be carried to replace the volumes being transported for TransCanada. It further states that without new customers and supplies to replace these volumes, Great Lakes would experience serious capacity utilization problems. The high-volume shipments for TransCanada have enabled Great Lakes to minimize rates for its U.S. customers through the wider allocation of its fixed costs. Moreover, Great Lakes would have difficulty providing gas exchange services for its customers without the use of gas delivered for TransCanada.

The long-term nature of the Great Lakes/TransCanada contract should continue to provide Great Lakes the assurance it needs to obtain future short and long-term financing as well as the ability to improve service to its customers. Historically, TransCanada has proven itself a dependable source of supply for Great Lakes.

The record in this proceeding has been reviewed and Great Lakes' arrangement is found to be reasonable and beneficial. No member of the public has come forward to contend otherwise.

Great Lakes will use only existing facilities to import and export volumes under its amended agreement, and the volumes to be imported and exported will remain the same. Thus no environmental impacts are anticipated.*

Accordingly, the ERA has determined that approval of the amendment to Great Lakes' contract extending its current import and export authorization is not inconsistent with the public interest, and should be granted.

*The DOE has determined that, because existing pipeline facilities will be used, granting authorization to import and export the requested volumes of natural gas is clearly not a Federal action significantly affecting the quality of the environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

The import and export authorization previously issued by the Federal Power Commission (FPC) to Great Lakes Transmission Company by EPC Order No. 521, issued on June 20, 1967, in Docket No. CP66-112 (37 EPC 1070), and later amended on June 1, 1971, in Docket No. CP71-223 (45 EPC 1037), is hereby further amended to extend the authorized volumes to permit Great Lakes to import and export up to 815,000 Mcf of Canadian natural gas per day for the period November 1, 1992, to November 1, 2005.

Issued in Washington, D.C., January 23, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-2622 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP85-67-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

January 28, 1985

Take notice that on January 22, 1985, National Fuel Gas Supply Corporation (National Fuel) tendered for filing certain proposed changes to Rate Schedule T-2 of its FERC Gas Tariff, to be effective February 1, 1985. Rate Schedule T-2 is applicable to transportation service provided by National Fuel to end-users pursuant to § 157.209 of the Commission's Regulations. The proposed changes would allow National Fuel to continue to collect an Additional Incentive Charge (AIC) of five (5) cents per Mcf beyond January 31, 1985. A waiver of § 157.209(f)(2)(i) is requested to permit such extension. In addition, the proposed changes would assure that there is no lapse in National Fuel's authorization to transport gas on behalf of the customers now subject to Rate Schedule T-2.

A copy of this filing was served on the following:

Mercer Gas Company
National Fuel Gas Distribution Corporation
Delmarva Power and Light Company
Penn Fuel Gas, Incorporated
Cook Forest Gas Co., Inc.
Consolidated Natural Gas Service Company, Inc.
North East Heat & Light Company
The Peoples Natural Gas Company
Elizabethtown Gas Company
UGI Corporation
Kane Gas Light & Heating Company
Consolidated Edison Company of New York, Inc.
New Jersey Natural Gas Company
The Brooklyn Union Gas Company
Public Service Gas and Electric Company
Algonquin Gas Transmission Company
Public Service Commission of the State of New York
Pennsylvania Public Utility Commission
New Jersey Department of Energy
Public Utilities Commission
Delaware Public Service Commission

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with § 385.211 or 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such petitions or protests should be filed on or before February 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-2678 Filed 1-31-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-66-000]

Trailblazer Pipeline Co.; Change in FERC Gas Tariff

January 28, 1985

Take notice that on January 23, 1985, Trailblazer Pipeline Company (Trailblazer) submitted for filing as part of its FERC Gas Tariff, Original Volume No. 1, to be effective March 1, 1985:

Third Revised Sheet No. 4
First Revised Sheet No. 8
First Revised Sheet No. 9

Trailblazer states that the purpose of the filing was to amend the rate provision for its Rate Schedule I Overrun Transportation Service. Trailblazer proposed that the change for the overrun service be billed at the commodity rate level of its Rate Schedule T rather than the formula based design presently in effect.

A copy of this filing was mailed to Trailblazer's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with § 385.214 and 385.211. All such petitions or protests must be filed on or before February 5, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-2679 Filed 1-31-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of November 9 through November 16, 1984

During the week of November 9 through November 16, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: January 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 9 through Nov. 16, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 11, 1984	Economic Regulatory Administration, Washington, D.C.	HRD-0250	Motion for Discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted in response to the May 10, 1984, Proposed Remedial Order (Case No. HRO-0231) issued to R.P. Trading Company.
Do	Economic Regulatory Administration, Washington, D.C.	HRD-0252	Motion for Discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted in response to the Proposed Remedial Order (Case No. HRO-0217) issued to Atlantic Richfield Company.
Nov. 14, 1984	Economic Regulatory Administration, Washington, D.C.	HRD-0251	Motion for Discovery. If granted: Discovery would be granted to the Economic Regulatory Administration regarding Marathon Oil Company's inclusion of intracompany interest as a marine transportation cost and Marathon's offsetting of a 1978 cost overstatement with a 1977 cost understatement (Case No. HRO-0026).
Do	L.B. Carter Heating, Caribou, Maine	HEE-0107	Exception to the Reporting Requirements. If granted: L.B. Carter Heating would not be required to file Form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report".
Do	Whirlpool Corporation, Benton Harbor, Michigan	HEL-0001	Request for a Temporary Exception. If granted: Whirlpool Corporation would receive a temporary exception from the provisions of 10 CFR Part 430 which would permit the firm to modify the energy efficiency test procedures applicable to refrigerator-freezer models with electronic adaptive defrost controls.
Nov. 15, 1984	Donald Lee Espenshade Sr., APO, New York	HFA-0263	Appeal of Information Request Denial. If granted: The October 3, 1984, Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Donald Lee Espenshade, Sr. would receive access to information regarding security checks.
Do	Economic Regulatory Administration, Washington, D.C.	HRZ-0227	Interlocutory Order. If granted: Documents filed by the Economic Regulatory Administration (Case No. HRO-0193) would be kept confidential and released to MAPCO International, Inc. pursuant to a Protective Order.

REFUND APPLICATIONS RECEIVED

[Week of Nov. 9 to Nov. 16, 1984]

Dates	Name of refund proceeding/name of refund applicant	Case No.
11/13/84	Gulf/Veach Oil Company	RF40-228
11/13/84	Gulf/May's Gulf	RF40-229
11/13/84	Gulf/Orient Service Station, Inc.	RF40-230
11/13/84	Gulf/Harvey Charap's Service Station	RF40-231
11/13/84	Gulf/Transportation Supplies, Inc.	RF40-232
11/13/84	Gulf/J&T Transport, Inc.	RF40-233
11/13/84	Gulf/Beverly J. Properties, Inc.	RF40-234
11/13/84	Gulf/Henry's Interstate Gulf	RF40-235
11/13/84	Gulf/Morsemere Service Station	RF40-236
11/14/84	Gulf/Scandale's Holiday Gulf	RF40-237
11/14/84	Gulf/Kay Bee Auto Service of Deer Park, Inc.	RF40-238
11/14/84	Gulf/Laurway Servicenter, Inc.	RF40-239
11/14/84	Gulf/Prevett Oil Company, Inc.	RF40-240
11/14/84	Amtel/Maxoy Oil Company, Inc.	RF46-19
11/13/84	Amtel/May Oil Company	RF46-20
11/14/84	Willis/Highway Oil Company, Inc.	RF41-16
11/14/84	Willis/Independent Iron & Metal Corp.	RF41-17
11/14/84	Willis/Lake Erie Oil	RF41-18
11/14/84	Willis/Erie Press Systems	RF41-19
11/14/84	Willis/J.A. Holtz, Inc.	RF41-20
11/14/84	Willis/Horton Pre-Cast Concrete	RF41-21
11/14/84	Willis/Rich Miller Kendall Service	RF41-22
11/15/84	Montana/Burlington Northern Railroad	RF45-2

REFUND APPLICATIONS RECEIVED—Continued

[Week of Nov. 9 to Nov. 16, 1984]

Dates	Name of refund proceeding/name of refund applicant	Case No.
11/15/84	Belridge Oil/Tennessee	RQ6-130
11/15/84	Amoco/Tennessee	RQ21-131
11/15/84	Amoco/Ottawa & Chippews Indians	RQ21-132
11/15/84	Palo Pinto/Tennessee	RQ5-141
11/16/84	Gulf/The Town of Enfield	RF40-241
11/16/84	Gulf/Powers Gulf Service	RF40-242
11/16/84	Gulf/Winge's Sales Service	RF40-243
11/16/84	Gulf/Dan's Gulf	RF40-244
11/16/84	Gulf/Bob & John's Mt. Ivy Gulf, Inc.	RF40-245

[FR Doc. 85-2619 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of December 21 Through December 28, 1984

During the Week of December 21 through December 28, 1984, the applications listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: January 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 21 through Dec. 28, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 27, 1984	Dorchester Gas Corporation, Washington, D.C.	HEF-0559	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V in connection with the February 2, 1984 Consent Order with Dorchester Gas Corporation.

REFUND APPLICATIONS RECEIVED

[Week of Dec. 21 to Dec. 28, 1984]

Date	Name of refund proceeding/ name of refund applicant	Case No.
12/24/84	Al Cook & Son Gulf	RF40-437
12/24/84	Edward E. Griffiths	RF40-438
12/24/84	Tillery's Gulf Service	RF40-439
12/24/84	Red's Self Service	RF40-440
12/24/84	W.A. Norman	RF40-441
12/24/84	Honey Jean Service	RF40-442
12/24/84	Howe Oil Co	RF40-443
12/24/84	Franklin Road Gulf	RF40-444
12/24/84	Fred's Gulf Station	RF40-445
12/24/84	O'Brien's Gulf	RF40-446
12/24/84	Lewis Brothers	RF40-447
12/24/84	Bishops Gulf Service	RF40-448
12/24/84	Hicks Plaza, Inc	RF40-449
12/24/84	Jack's Service Center	RF40-450
12/24/84	Carroll A. Mitchell	RF40-451
12/24/84	State of North Carolina	RF40-452
12/24/84	Taynton Freight System	RF40-453
12/24/84	Johnny's Gulf Service	RF40-454
12/24/84	Carl C. Hill	RF40-455
12/24/84	Adrian's Gulf Service	RF40-456
12/24/84	St. Johnsbury Trucking Co	RF40-457
12/24/84	M. Morneault's Gulf, Inc	RF40-458
12/24/84	Container Transport, Inc	RF40-459
12/24/84	Paul's Gulf Service	RF40-460
12/24/84	Brasseaux's Gulf Service	RF40-461
12/26/84	Conoco/Hess Petroleum, Inc	RR34-3
12/26/84	Conoco/Thrift Marts, Inc	RR34-4
12/26/84	Conoco/Dynamics Industries, Inc	RR34-5
12/26/84	J.C. Roberts Oil Co	RF40-462
12/26/84	Russell Stewart Oil Co	RF40-463
12/26/84	Richard C. Krausman	RF40-464
12/26/84	Rowland L. Jordan	RF40-465
12/26/84	Charles K. Rodsill Gulf	RF40-466
12/26/84	Homer Road Gulf	RF40-467
12/26/84	Rollins Leasing Gulf	RF40-468
12/26/84	Steve's Gulf Service	RF40-469
12/26/84	Ed McGrath	RF40-470
12/26/84	Linger Trucking Co	RF40-471
12/26/84	Tony's Auto Service	RF40-472

REFUND APPLICATIONS RECEIVED—Continued

[Week of Dec. 21 to Dec. 28, 1984]

Date	Name of refund proceeding/ name of refund applicant	Case No.
12/26/84	Gabour Gulf Service	RF40-473
12/26/84	David A. Smith	RF40-474
12/26/84	Vineville Gulf Service	RF40-475
12/26/84	Hunsaker Truck Lease	RF40-476
12/26/84	Veriline Dairy Products	RF40-477
12/26/84	Chappell Gulf E-Z-GO #43	RF40-478
12/26/84	Chappell Gulf E-Z-GO #33	RF40-479
12/26/84	Ferriero's Gulf	RF40-480
12/26/84	Leaton Ready Mix	RF40-481
12/26/84	Hartford Despatch & Warehouse	RF40-482
12/26/84	Quillan's Concrete, Inc	RF40-483
12/26/84	Rsmada Inn Gulf	RF40-484
12/26/84	Standale Gulf	RF40-485
12/26/84	Bamberg's Grocary	RF40-486
12/26/84	Ralph D. Weaver, Inc	RF40-487
12/27/84	Charles E. Lytle, Jr	RF40-488
12/27/84	Stanley Mariiszka	RF40-489
12/27/84	James Weldon	RF40-490
12/27/84	All Car Service, Inc	RF40-491
12/27/84	York Truck Rental, Inc	RF40-492
12/27/84	Ken's Gulf Station	RF40-493
12/27/84	Gold Kist, Inc	RF40-494
12/27/84	H.G. Bauer Moving & Storage	RF40-495
12/27/84	Arthur W. Bowers Ltd	RF40-496
12/27/84	Harris Distributors, Inc	RF40-497
12/27/84	Kulpy Gordon, Inc	RF40-598
12/27/84	Cloverleaf Guld	RF40-499
12/27/84	Augy's Gulf Service	RF40-500
12/27/84	Pilt Freight Carriors, Inc	RF40-501
12/27/84	Lassalle Gas Co	RF40-502
12/27/84	Concord Oil Co	RF40-503
12/27/84	College Hill Gulf	RF40-504
12/27/84	Blount's Gulf Service	RF40-505
12/27/84	Smith & Cyphus Service	RF40-506
12/27/84	Old National Gulf Service	RF40-507
12/27/84	Transport Oil Station #530	RF40-508
12/27/84	D.L. Cheaves Gulf	RF40-509
12/27/84	City of North Olmsted	RF40-510
12/27/84	North Olmsted Municipal Bus	RF40-511

REFUND APPLICATIONS RECEIVED—Continued

[Week of Dec. 21 to Dec. 28, 1984]

Date	Name of refund proceeding/ name of refund applicant	Case No.
12/27/84	John A. Clancy	RF40-512
12/28/84	Conoco/Gas N Sav, Inc	RF34-31
12/28/84	Entemann's, Inc	RF40-513
12/28/84	Michigan	RF40-514
12/28/84	Michigan	RF40-515
12/28/84	Jim's Gulf Service	RF40-516
12/28/84	Williams Oil Co	RF40-517
12/28/84	Franklin Co. Oil Co	RF40-518
12/28/84	Peter Pan Bus Lines	RF40-519
12/28/84	Olen Oil Co	RF40-520
12/28/84	Plains Oil & Gas	RF40-521
12/28/84	Adams Oil & Tire Co	RF40-522
12/28/84	Watson Oil Co., Inc	RF40-523
12/28/84	Clayton Brashek	RF40-524
12/28/84	Egan Oil & Supply Co	RF40-525
12/28/84	W.C. Knolle, Inc	RF40-526
12/28/84	Super Quality Oil Co	RF40-527
12/28/84	Ward Trucking Corp	RF40-528
12/28/84	Roy Stone Transfer Corp	RF40-529
12/28/84	Regional Transit Service	RF40-530
12/28/84	Chemicals Learnar Tank Lines	RF40-531
12/28/84	Virginia-Carolina Freight	RF40-532
12/28/84	Maurice Ball Fuel Corp	RF40-533
12/28/84	The Cincinnati Vulcan Oil	RF40-534
12/28/84	Mark L. Haynie	RF40-535
12/28/84	Margaretville Gulf	RF40-536
12/28/84	Lawrence Beal	RF40-537
12/28/84	Jay B. Hurst	RF40-538
12/28/84	William D. Filmer	RF40-539
12/28/84	Ball & Sons Gulf	RF40-540
12/28/84	Luposello's Garage, Inc	RF40-541
12/28/84	Greenmont Gulf	RF40-542

[FR Doc. 85-2620 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Week of December 31, 1984 Through January 4, 1985

During the week of December 31, 1984 through January 4, 1985, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: January 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Ball Marketing, Inc., Lafayette, Louisiana; Crude Oil, HRO-0268

On January 3, 1985, Ball Marketing, Inc., 111 Mercury Street, P.O. Box JJ, Lafayette, Louisiana 70501 filed a Notice of Objection to a Proposed Remedial Order which the DOE Houston District Office of Enforcement issued to the firm on November 20, 1984. In the PRO the Houston District found that during January 1974 to March 1976 Ball resold crude oil which was a "new item" as defined in 10 CFR 212.111(a) but charged a price which exceeded the maximum lawfull selling price. Therefore the PRO alleges that Ball violated 10 CFR 212.10 and 212.93

According to the PRD the violation resulted in $570,728.38 of overcharges.

Brio Petroleum, Inc., and L.B. White, Dallas, Texas; Crude Oil, HRO-0266

On January 3, 1985, L.B. White, 6254 Emeraldwood Place, Dallas, Texas 75240 filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas District Office of Enforcement issued to Brio Petroleum, Inc. on September 20, 1984. On January 7, 1985, the State of Texas filed a Notice of Objection to the same PRO.

In the PRO Dallas District found that during the period May 1978 through December 1980, the firm resold crude oil at prices in excess of those permitted under 10 CFR Part 212.

According to the PRO the Brio Petroleum violation resulted in $1,943,119.32 of overcharges.

Swann Oil, Inc., Bala Cynwyd, Pennsylvania; Petroleum Products, HRO-0267

On January 2, 1985, Swann Oil, Inc., 130 Presidential Blvd., Bala Cynwyd, PA 19004 filed a Notice of Objection to a Proposed Remedial Order which the Office of Special Counsel of the Department of Energy issued to the firm on June 22, 1984. In the PRO the Office of Special Counsel found that during the period November 1, 1973 to December 31, 1973, Swann Oil, Inc. sold various petroleum products at prices in excess of those allowed by 10 CFR 212.93(a), formerly 6 CFR 150.359, of the Mandatory Petroleum Allocation and Price Regulations.

According to the PRO the violation resulted in $2,789,266.00 of overcharges.

[FR Doc. 85-2621 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Arkansas Louisiana Gas Co.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $2,807,671 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving the Arkansas Louisiana Gas Company, and its subsidiary, Arkla Chemical Company, both of which are refiners of petroleum products located in Shreveport, Louisiana.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0201.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by the Arkansas Louisiana Gas Company and the Arkla Chemical Company which settled possible violations of DOE price controls in the firms' sales of motor gasoline, diesel fuel and other refined petroleum products to their customers during the September 1, 1973 through December 31, 1975 period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Arkansas Louisiana Gas and Arkla Chemical pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of covered Arkansas Louisiana Gas and Arkla Chemical products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: January 9, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Arkansas Louisiana Gas Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0201.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where DOE is

unable readily to ascertain the persons who were injured or the amounts that such persons may be eligible to receive as a result of enforcement proceedings. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Arkansas Louisiana Gas Company was a gas plant operator and refiner as those terms were defined in 10 CFR Part 212. Arkla Chemical Company, its wholly owned subsidiary, was a refiner and reseller of petroleum products. They were considered to be a single firm for purposes of DOE regulations. The two companies (together referred to hereinafter as Arkla), had main offices located in Shreveport, Louisiana. A DOE audit of Arkla's records revealed possible regulatory violations with respect to the firm's pricing of motor gasoline, diesel fuel, and other refined petroleum products, during the period September 1, 1973 through December 31, 1975 (hereinafter referred to as the consent order period). In order to settle all claims and disputes between Arkla and the DOE regarding the firm's pricing of refined products during the consent order period, Arkla and DOE entered into a consent order on January 31, 1981. *See* 46 FR 20587 (April 6, 1981). Under the terms of the consent order, Arkla remitted $2,807,671 to the DOE on May 13, 1981. That sum is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of November 30, 1984, the Arkla escrow account had earned $1,373,931 in interest. This Proposed Decision concerns the distribution of the $2,807,671 that was deposited into the escrow account, plus the accrued interest.

II. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Arkla consent order fund. As we have stated in previous Decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 (1981). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. In the first stage, we will attempt to refund money to identifiable purchasers of petroleum products who may have been injured by Arkla's pricing practices during the period September 1, 1973 through December 31, 1975. After meritorious claims are paid in the first stage, a second stage refund procedure may ecome necessary. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

III. Proposed Refund Procedures

A. Refunds to Identifiable Purchasers

We propose that the Arkla consent order funds be distributed to claimants who satisfactorily demonstrate that they were injured by Arkla's alleged pricing violations. The information available to us at this time regarding Arkla's operations during the audit period does not provide names and addresses of all of the firm's customers. However, we do know the names of some of the customers, and they are listed in the Appendix to this decision. According to information in the audit file, Arkla marketed its products in a four-state region, including parts of Arkansas, Louisiana, Oklahoma, and Texas. Furthermore, from our experience we believe that the claimants in this proceeding will fall into the following categories: (1) Resellers (including retailers), and (2) firms, individuals, or organizations that were consumers (end-users). The petroleum products purchased by these claimants were purchased either directly from Arkla or from other firms in a chain of distribution leading back to Arkla. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Arkla petroleum products for the period September 1973 through December 1975. If the products were not purchased directly from Arkla, the claimant must include a statement setting forth its reasons for believing the product originated with Arkla. In addition, a reseller or retailer that files a claim will be required to establish that it was injured by the alleged overcharges. To make this showing, a reseller or retailer claimant will first be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it must provide some further evidence of injury. *See Amoco* at 88,215. For example, a reseller can show competitive injury by demonstrating that the prices it paid for products purchased from other suppliers were lower than those it paid to Arkla. *See, e.g., Tenneco Oil Co./Racetrac Petroleum, Inc.*, 10 DOE ¶ 85,023 (1982).

As in many prior special refund cases we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Arkla during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have also been greater, and any purchaser is allowed to file a refund application based on a claim that it bore a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Arkla consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). AS we have noted in many previous refund decisions, there may be considered expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an

applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Arkla and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the time period of the consent order is quite distant, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable.[1] *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,228 (1984) and cases cited therein.

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Arkla petroleum products need only document their purchase volumes from Arkla to make a sufficient showing that they were injured by the alleged overcharges.

We believe that if a reseller or retailer made only spot purchases from Arkla, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, 8 DOE ¶ 82,597 (1981) at 85,396–97 (hereinafter cited as *Vickers*). We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Arkla petroleum products. *See Amoco* at 88,200.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by our estimate of the total gallonage of products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.02437 per gallon,[2] exclusive of interest. As of November 30, 1984, accumulated interest increased the volumetric refund amount to $.03629.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases tht the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register**, notice will be provided to the Independent Gasoline Marketers Council, the Petroleum Marketers Association of America, the Service Station Dealers of America, the National Association of Truck Stop Operators, the Society of Independent Gasoline Marketers of America, and to local newspapers in the region where Arkla apparently made most of its sales. These organizations should be helpful in advising potential claimants of this proceeding.

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. For example, the funds may be distributed through plans formulated by state governments to benefit consumers who were likely injured by Arkla's alleged overcharges. *See, e.g., Northeast Petroleum Industries*, 11 DOE ¶ 85,199 (1983). However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of comments containing proposals for alternative distribution schemes.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by the Arkansas Louisiana Gas Company and Arkla Chemical Company pursuant to the consent order executed on January 31, 1981 will be distributed in accordance with the foregoing Decision.

Notes

(1) Resellers whose monthly purchases during the period for which a refund is claimed result in a volumetric refund of greater than $5,000 but who cannot establish that they did not pass through the price

increases, or who limit their claims to the threshold amount, will be eligible for a refund of the $5,000 threshold amount without being required to submit additional evidence of injury. *See Vickers* at 85,396; *see also Ada* at 88,122.

(2) According to information available to us, during the consent order period, Arkla sold 115,221,212 gallons of petroleum products. The volumetric refund amount is obtained by dividing the money remitted by Arkla by this volume amount ($2,807,671 divided by 115,221,212 gallons = $0.02437 per gallon).

Appendix—Arkansas Louisiana Gas Company

[Customers-Addresses Unknown]

Consumer—Wholesale Brokerage

AL&W Moore
Afco Metals
Arkansas Cement Corporation
Arkansas Foundry Company
Box Guthrie Contractors
Butler Johnson, Inc.
C&C Packing Company
Chevyland
Coca-Cola Bottling Company
D. N. Marchall & Son
Dan Glover Trucking
East Texas Motor Freight
Figgord Hill Company
Gordon Transports
Gross Service Company
Halliburton Services
Herrin Transfer 7 Whse. Company
Highway Dump Haulers
James A. Rogers Construction
John McIntyre
John Olvey
Libbey Glass Company
McLarty Leasing
Machen Construction
Matthews Trucking Company
Metro Wast Company
Newspaper Production
Owens-Illinois
Pickens-Bond Construction
Pilgrim Industries
Razorback-Ready Mix Concrete
Shreve Christian School
Shreveport Beverage Company
Stephen's Truck Lines
T.E. Mercer Trucking
Texarkana Concrete Company
Tri-State Wholesale produce
Yellow Cab Company
Mechanical Service
Sharps DX Service Station
Shreveport Oil Company
Simpson, Alvin
Smith-McCain Equipment Company
Southland Corporation
Southside Service
Stan-Ann Oil Company
Sullivan Oil Company
Edward Swain
Tiger Mart Self Service
Tiger Mart Super Service
Tom's Crystal Oil Company
U Auto Tinker
Waskom Oil Company

Retailer—Wholesale Brokerage

Adams Oil Company
Alvin Simpson
Bailey's Motel
Billups Western Petroleum Company
Car Care
Cash & Son's LP Gas Company
Christopher Oil Company
Counts DX Service Station
L. C. Culverhouse
D&S Self Service
Davis Oil Company
Rex Dodson
Economy Oil Company
Edward Swain
Foster Oil Company
Trench LP Gas Company
Giant Petroleum Company
Goree Truck Stop
Hazen Oil Company
Halco Oil Company
Holicer Gas Company
Impac Enterprise
Jackpot, Inc.
Jim Benton Oil Company
J. C. Penny Company
J. I. Spainhour, Inc.
King's Arkla Station
Langster Texaco Truck Stop
McDonald Butane Company
Martin & Son
May Oil Company
Merlin Vick
M. L. Persons
P. M. Oil Company
Raymons Thompson
Resin Butane Company
Robbs Gulf Service
Robinson, J. S.
Scatterfield Oil Company
Savacool Conrete Products Company
Savacool & Roberts
Scogin Oil Company
Seven Eleven Stores

Reseller—Wholesale Brokerage

Allied Transport Company
Arkansas Petroleum Sales
Atlanta Butane Company
BBI Oil Company
Ball Oil Company
Bob Grable Oil
Burgess Oil Company
Byers Oil Company
Curtis Bedsa Oil
Curtis Parker Oil Company
Crystal Oil Company
Dasch Oil & Chemical
Deaton Oil Company
Dillard Oil Company
Four States Oil Products
Felton Oil Company
Franks Oil Company
Gaines Petroleum Company
Hamilton Oil Company
R. W. Hudson
C. G., Johnson, Oil Company
K. H. Oil Company
Kellogg-Oil Company
Land & Marine Rental Company
Lipton Oil Company
Matthews Oil Company
Miller-Claiborne Oil Company
Pate Oil Company
Petroleum Distributing
Petroleum Sales Company
Richardson Ayers
Southern Marketing
Smith Oil & Tire
F. B. Treat
Temple Oil Company
Temple Oil & Tire
Thrash Oil Company
Williams Chemical Company.

[FR Doc. 85-2590 Filed 1-31-85; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Big Bend Truck Plaza, et al.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $64,381.81 in consent order funds to members of the public. This money is being held in escrow following the settlements of separate enforcement proceedings involving Big Bend Truck Plaza (Case No. HEF-0036), Cougar Oil, Inc. (Case No. HEF-0057), and Gate Petroleum, Inc. (Case No. HEF-0077).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to the appropriate case number(s).

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to three separate

consent orders entered into by Big Bend Truck Plaza, Cougar Oil, Inc., and Gate Petroleum, Inc. (collectively referred to as the consent order firms), which settled possible pricing violations in the firms' sales of certain refined petroleum products to wholesale and retail customers during the relevant audit periods.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow accounts funded by the consent order firms pursuant to the consent orders. The DOE has tentatively established procedures under which purchasers of consent order products from a consent order firm during the relevant audit period may file claims for refunds from the consent order fund. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: January 14, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Names of Firms: Big Bend Truck Plaza; Cougar Oil, Inc.; and Gate Petroleum, Inc.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0036; HEF-0057; and HEF-0077.

The procedural regulations of the Department of Energy (DOE) provide that the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to implement special refund procedures for the purposes of providing restitution to persons who were injured by alleged or adjudicated violations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations may be used in situations where the DOE is unable readily to identify persons who may have been injured by such alleged or adjudicated violations or to ascertain readily the amounts of such persons' injuries. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 88 DOE ¶ 82,597 (1981) (*Vickers*).

I. Background

On October 13, 1983, the ERA filed a petition requesting that the OHA establish refund proceedings in order to distribute funds totalling $64,381.81 received pursuant to consent orders entered into by the DOE and the following parties: Big Bend Truck Plaza (Big Bend), located in Tallahassee, Florida; Cougar Oil, Inc. (Cougar), located in Selma, Alabama; and Gate Petroleum, Inc. (Gate), located in Jacksonville, Florida. These three firms shall be referred to collectively in this Proposed Decision as "the consent order firms."

The consent order firms are "reseller-retailers" of refined petroleum products as those terms were defined in 10 CFR 212.31. ERA audits of the consent order firms revealed possible violations of the Mandatory Petroleum Price regulations. Subsequently, each of these firms entered into a separate consent order with the DOE in order to settle its disputes with the DOE and to resolve potential civil liability with respect to certain sales of refined petroleum products. (*1*) Pursuant to these consent orders, the firms agreed to pay specified amounts to the DOE in settlement of their potential liability. (*2*) In addition, Big Bend also agreed in its consent order to refund money to one customer directly. *See* Appendix A. The firms' payments are currently being held in separate escrow accounts pending distribution by the DOE.

II. Proposed Refund Procedures

We have considered the ERA's Petition for the Implementation of Special Refund Procedures and have determined that it is appropriate to establish such procedures with respect to the funds remitted by the consent order firms. As we have stated in previous Decisions, refunding moneys obtained through DOE enforcement proceedings to parties who were injured by alleged or adjudicated regulatory violations is the focus of Subpart V proceedings. *See generally Vickers.* Based upon our experience with Subpart V cases, we propose that the distribution of refunds in the present cases should take place in two stages. In the first stage, we will attempt to refund moneys to identifiable customers who were injured by a consent order firm's alleged pricing practices during the appropriate consent order period. After meritorious claims are paid in the first stage, a second-stage refund procedure may become necessary.

Location of identifiable parties who could have been injured by the transactions which formed the basis for the consent orders has proved to be difficult. While the ERA audit files that pertain to these three consent order firms provide the names of some purchasers of those firms' products, they generally do not include addresses. We have attempted, with little success, to obtain addresses of the customers of the consent order firms who were identified in the audit files. The names and, where known, the addresses of these customers are set forth in the Appendices to this Proposed decision. Furthermore, although the audit materials provide very little information about the customers, it appears that at least some of the identified customers may be affiliated with the consent order firms. While we will attempt to obtain more information with respect to those firms identified in the audit files, we note that it is likely that there are a number of potential claimants in these proceedings of whom we are currently unaware. Accordingly, we will publicize these proceedings in order to provide an opportunity for potential claimants both to file comments concerning the procedures we propose to establish and to file refund claims at the appropriate time.

Potential claimants in this proceeding will fall into the following categories: (1) Resellers (including retailers) of the products specified by the consent orders, and (2) firms, individuals, or organizations that were consumers (end-users) of the consent order products. The products purchased by claimants will have been purchased either directly from a consent order firm or from another firm in a chain of distribution leading back to that firm. As explained below, we propose that the consent order funds be distributed to claimants who demonstrate satisfactorily that they have been injured by a consent order firm's alleged pricing practices.

In general, resellers who file refund claims will be required to establish that they absorbed the alleged overcharges. To make this showing, they will have to demonstrate that, at the time they purchased refined petroleum products from a consent order firm, market conditions would not permit them to increase their prices to pass through the additional costs associated with the

alleged overcharges. In addition, resellers will generally be required to show that they maintained "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover those costs by increasing their prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 85,125 (1982). The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

As in many prior special refund cases, we will adopt certain presumptions in order that refunds may be distributed efficiently and equitably. First, we propose to adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by the consent order firms during the appropriate consent order periods. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we intend to adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective, and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we are proposing to adopt in these cases are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because of the manner in which the DOE price regulations required a regulated firm to account for increased costs in determining its prices. In the present cases, the audit files do not contain specific alleged overcharge amounts to particular customers that might serve as a basis for allocating the refunds. Therefore the volumetric approach is appropriate in these cases. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser will be allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co. and Richardson Products Co. Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984). To determine the per gallon volumetric factor, each consent order amount will be divided by the estimated total volume of refined petroleum products which the consent order firm sold during the consent order period. The volumetric factors for the consent order firms are specified in the Appendices to this Proposed Decision. Refunds will be calculated by multiplying the volumetric factor by the total amount of the products covered by a consent order that an applicant purchased from a consent order firm during the consent order period. The interest which has accrued on the money in each escrow account will be distributed to each successful claimant in proportion to its refund amount.

The presumption that reseller claimants seeking refunds up to a certain threshold level were injured by the pricing practices settled in the consent orders that are the subjects of these proceedings is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and therefore to utilize its limited resources more efficiently. Finally, we know that these smaller claimants purchased covered products from the consent order firms and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claims presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we propose to adopt, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on monthly purchases below a threshold level.*(3)* Previous OHA refund decisions have expressed the threshold either in terms of a purchase volume figure from the consent order firm, or as a dollar refund figure. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984) (*TOGCO*) we noted that describing the threshold in terms of a dollar amount rather than purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose to follow the same approach in this case. The adoption of a threshold level below which a claimant does not have to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the present cases, we believe that the establishment of a presumption of injury for all volumetric claims of $5,000 or less is reasonable. *See, id; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the presumptions we intend to adopt in these proceedings, we are making a finding that end-users, or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the consent orders. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order periods, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also TOGCO*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of petroleum products specified in the consent orders and sold by consent

order firms need only document their purchase volumes from a consent order firm in order to make a sufficient showing that they were injured by the alleged overcharges.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those cases. *See, e.g., Uban,* 9 DOE at 88,225; *see also* 10 CFR 205.286(b).

Refund applications in these proceedings should not be filed until a final Decision and Order is issued. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final Decisions in the **Federal Register**, we will provide copies to several petroleum marketing organizations. If appropriate, we also intend to publicize these proceedings in local newspapers in the areas where the consent order firms conducted business. Finally, we will continue our efforts to obtain a more comprehensive list of the names and addresses of potential claimants.

In the event that money remains after all first-stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with the remaining funds until the first-stage refund procedures are completed.

It Is Therefore Ordered That:

The refund amuonts remitted to the Department of Energy by the consent order firms listed in the Appendices to this Decision and Order will be distributed in accordance with the foregoing Decision.

Footnotes

(1) None of the consent orders contains an admission by the consent order firm or a finding by the DOE that the firm violated the price regulations.

(2) In a letter accompanying full payment of the settlement amount specified in the Gate Consent Order, counsel for Gate stated that payment was made under protest. *See* November 20, 1981 letter from Frank X. Friedman, Jr., to the Director of the ERA's Office of Enforcement. In this regard, Mr. Friedman referred to DOE Ruling 1981–3, 2 Fed. Energy Guidelines ¶ 16,080, in which the DOE stated that, in view of the decision in *Shell Oil Co.* v. *Federal Energy Administration,* 574 F.2d 512 (1978), the agency would not seek to give effect to the portion of the unleaded gasoline rule which applied to resellers, reseller-retailers, and retailers, 10 CFR 212.112(b)(2) and (3). Based upon his understanding that Ruling 1981–3 totally deregulated sales of unleaded gasoline, Mr. Friedman contended that the portion of the settlement amount based on alleged overcharges in sales of unleaded gasoline should be subtracted from the amount Gate was required to place in the DOE escrow account.

We have previously rejected such an interpretation of the Ruling in question. *See Leese Oil Co.,* 10 DOE ¶ 83,015 at 86,134 (1982). In fact, the Ruling explicitly states that unleaded gasoline sales remain subject to price controls under 10 CFR 212.93. *See* 2 Fed. Energy Guidelines at 16,787. The consent order as negotiated protects Gate from re-audit with respect to its compliance with Section 212.93 in its unleaded gasoline sales and ensures that the DOE will not make a finding that the firm overcharged its customers in its sales of unleaded gasoline during the consent order period. Since Gate continues to benefit from the consent order, the issuance of Ruling 1981–3 does not constitute a significantly changed circumstance that warrantes a modification of the consent order.

(3) Several groups of purchasers shall be presumed not to have been injured by any overcharges, and will therefore be ineligible for refunds in this proceeding. For example, resellers that were spot purchasers from a consent order firm will be ineligible to receive any refunds, unless they make a showing that rebuts the presumption that they were not injured. As we have previously noted, spot purchasers would not have made spot market purchases of a firm's product at increased prices unless they were able to pass through the full amount of the firm's quoted selling price at the time of purchase to their own customers. *See Vickers,* 8 DOE at 85,396–97. In order to overcome the rebuttable presumption that they were not injured, spot purchasers should submit additional evidence to establish that it would be inappropriate to presume that the firm had discretion as to where and when to make the purchase(s) upon which the refund claim is based. Moreover, purchasers from a consent order firm that were affiliated with that firm in such a way that any refunds received by them would inure to the consent order firm shall be ineligible for refunds.

Appendix A

Big Bend Truck Plaza

Case Number: HEF–0036.
Consent Order Date: January 21, 1980.
Period Covered by Consent Order: November 1, 1973 through April 30, 1976.
Consent Order Amount: $18,000.
Consent Order Product: Diesel Fuel.
Volume Sold during Consent Order Period: 5,894,547 gallons.
Volumetric Amount: $0.00305 per gallon.
Location of firm: Tallahassee, Florida, Lloyd, Florida.

Identified Purchasers

Alterman Transport, 3035 Jackson Bluff Road, Tallahassee, FL 32304
A&S Trucking
American Scrap
B.C. McWharton
B.H. Harrison
Butler Brokerage
Cachat Brother Produce
Cain T. Bultman, Inc.
Colonial Fast Freight
Jon Cream
Cunningham Produce
Deabus Transit
Duval Lumber
Duvard Hamsby
E.T. Griffis
Florida Beef Producers
Florida Refrigerated Service
James Friday
Global Van Lines
Grant Tomato
Gustafsons
Howard Hall
T.R. Johnson
Magic City Products
Maxi Mart
Mid-Continent Systems, Inc., Mid-Continent Plaza, West Memphis, AR 72301
Middletown Produce
New Truck Lines
Nu Car Carriers
Osborn Truck Lines, Inc.
Petroleum Carrier Corporation
Peturis Brothers
Republic Van Lines
John Riley
Seminole Asphalt
T&T Trucking
Terrys Dream Bayou
Watkins Metal Lines
Weathus Brothers
West Nebraska Express
Wilson Brothers

Special Information

The Big Bend Consent Order provided for a refund of $854.57 to the Georgia Power Company, which purchased Big Bend diesel fuel sold by Mid-Continent, Inc., a Big Bend customer, in January and November 1974. Since the Big Bend Consent Order has explicitly provided for restitution with respect to alleged overcharges by Big Bend in sales of Big Bend product ultimately sold to Georgia Power during the entire audit period, we will not consider those volumes in establishing the per gallon refund amount to be made available in the Big Bend refund proceeding. In addition, Georgia Power Company shall be ineligible for any further refunds in this proceeding, and neither Mid-Continent, Inc. nor any of its predecessors, subsidiaries, or successors shall be eligible for any refunds based upon the specified January and November 1974 transactions.

According to our records, although Big Bend has remitted the $18,000 principal escrow amount specified in the Big Bend Consent Order, the firm still must make interest payments, since the consent order permitted payments to be made on an installment plan. The volumetric amount in the Big Bend case has been calculated on the basis of the principal consent order amount. At such time as Big Bend completes its interest payments, refund recipients may be eligible for additional refunds based proportionately on the additional funds made available by Big Bend. In addition, as we noted in the text of this Proposed Decision, any meritorious claimant will receive a proportionate share of the interest accrued on the Big Bend escrow account.

Appendix B

Cougar Oil, Inc.

Case Number: HEF-0057.
Consent Order Date: November 2, 1981.
Period Covered by Consent Order: January 1, 1979 through December 31, 1979.
Consent Order Amount: $16,381.90.
Consent Order Product: Motor Gasoline.
Volume Sold: 13,113,608 gallons.
Volumetric Amount: $0.00125 per gallon.
Location of Firm: Selma, Alabama and other Alabama locations.

Identified Purchasers

Adams Grocery
Ashley Market
John Bitti
Blacks Service Station, 512 S. Alabama Avenue, Monroeville, Alabama
Brodford Garage
Cross Service Station*, Frisco City, Alabama
J.N. Edward*
Jack Edwards*
Nolan Edwards*
Garree Montgomery*
Harold Lancaster
Harringan Lumber Company, P.O. Drawer 926, Monroeville, Alabama 36461
Holman Garage*
Holman Grocery
Holder Union 76 Service Station
Ronnie Jordan
Lone Star Service Station*
Douglas McDinir
A.J. McDonnell*
John Ritts*
Salter's Welding Shop
David Stacey*
Uriah Well and Supply Company
R.B. Williams Company*

Special Information

Purchasers from Southern Energy Company (SECO), a subsidiary of Cougar located in Monroeville, Alabama, will only be eligible for refunds based on purchases that took place from June 1979 through December 1979, since SECO was acquired by Cougar in June 1979. For similar reasons, purchasers from Sentell Oil, another Cougar subsidiary, will be eligible only for refunds based on purchases that took place from April 1979 through December 1979, and purchasers from Sturgis, a SECO subsidiary, will be eligible only for refunds for purchases occurring in December 1979.

Appendix C

Gate Petroleum, Inc.

Case Number: HEF-0077.
Consent Order Date: October 15, 1981.
Period Covered by Consent Order: April 1, 1979 through September 30, 1979.
Consent Order Amount: $30,000.
Consent Order Product: Motor Gasoline (including ethyl).
Volume Sold: 26,842,448 gallons.
Volumetric Amount: $0.00112 per gallon.
Location of Firm: Jacksonville, Florida (gasoline sold in Florida, Georgia, Virginia, Kentucky, Tennessee, South Carolina, North Carolina.

Identified Purchasers

Joyce Arbuthnot
Asbury's Trading Post
Dewitt Head
Dutch Grocery
James W. Ellis
Fralick's Service Station.
Green Acres Country Store, Normandy Blvd., Jacksonville, FL
H&H Petroleum Company
Robert Hatcher
Harold Heafner
Hi-Way Market
Lake Asbury
Martin Oil Company, P.O. Box 5464, Jacksonville, FL 32207
Mayport Motor Parts, 2825 Mayport Blvd., Jacksonville, FL 32233
Moody's Fast Food
North Florida Motors
Possum Petroleum
Repey Petroleum
Wesco Petroleum, 128 Shore Lake Road, Knoxville, TN
Woodman's Grocery
Wright Trucks

*These purchasers were identified from 1973 sales invoices of SECO (*See* Special Information below), a Cougar subsidiary. We do not therefore know whether these purchasers were Cougar customers during the audit period.

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BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Eddy Refining Co. and Key Oil. Co.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from Eddy Refining Company and Key Oil Company in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by May 2, 1985, should conspicuously display a reference to case number HEF-0206, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Indpendence Avenue, S.W., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR § 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of consent order between Eddy Refining Company and Key Oil Company, both located in Houston, Texas, and DOE. The consent order settled all disputes between DOE and the two firms concerning possible violations of DOE price regulations with respect to the firms' sales of refined petroleum products during the period October 1, 1973 through January 28, 1981.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by May 2, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: January 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

January 18, 1985.

Implementation of Special Refund Procedures

Names of Firms: Eddy Refining Company and Key Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0206.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the DOE Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who were injured or ascertain the amounts that such persons are eligible to receive. *See Office of Enforcement*, 9 DOE ¶82,553 at 85,284 (1982); 10 CFR 205.280.

On October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into Eddy Refining Company (Eddy) and Key Oil Company (Key). Eddy is a refiner and Key is a reseller-retailer of refined petroleum products as those terms were defined in 10 CFR 212.31. Eddy and Key are located in Houston, Texas, and Key operates a number of retail service stations in the Texas Gulf Coast area. As a part of its enforcement responsibilities, ERA audited Eddy's and Key's sales of refined petroleum products from December 1, 1973 through June 30, 1976 (the audit period). The audit revealed possible regulatory violations, the amount of which depended upon whether Eddy and Key were determined to be a single firm, as ERA maintained, or two independent companies, as was the position of the firms. In order to settle all claims and disputes between the firms and the DOE regarding Eddy's and Key's compliance with the federal petroleum price and allocation regulations administered and enforced by the DOE during the period October 1, 1973 through January 28, 1981, the firms entered into a consent order on July 19, 1983 in which Eddy and Key agreed to remit $244,000 to the DOE.(1) The consent order provides that this sum be paid in 30 successive monthly installments of approximately $8,133 each, beginning on October 1, 1983. The funds are being deposited into an interest-bearing escrow account for ultimate distribution to the parties injured by the alleged overcharges. As of December 31, 1984, the funds on deposit in the Eddy/Key escrow account, including interest, amounted to $127,500.25.

On November 7, 1984, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute the funds that have been or will be deposited in the Eddy/Key escrow account, plus accrued interest. 49 FR 45645 (November 19, 1984). This decision establishes procedures for filing claims in the Eddy/Key refund proceeding. We will describe the information that a purchaser of refined petroleum products from Eddy or Key should submit in order to demonstrate that it is eligible to receive a portion of the consent order funds. We will not, however, propose procedures at this time for the disposition of funds that may remain in the escrow account after all claims have been paid. Our determination concerning the disposition of those funds will necessarily depend on the amount remaining in the account at that time. It is therefore premature for us to address issues regarding the disposition of any remaining funds after all claims have been paid. In response to our November 7, 1984 proposed decision, the State of New Mexico filed comments regarding the disposition of such remaining funds. In light of the above discussion, these comments will not be discussed here.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Eddy/Key consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement*, 9 DOE ¶82,553 at 85,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the Eddy/Key consent order funds.

II. Refunds to Injured Purchasers

The Eddy/Key consent order funds will be distributed to claimants who satisfactorily demonstrate that they have been injured by Eddy's and Key's alleged pricing violations. The information available to us at this time regarding the firms' operations does not provide the names and addresses of the firms' customers. Our experience with Subpart V proceedings indicates that the likely claimants in this proceeding, when more fully identified, will fall into two categories: (1) resellers (including retailers) of Eddy or Key refined petroleum products, and (2) firms, individuals, or organizations that were consumers (end-users) of refined petroleum products obtained from the two firms. The products purchased by these claimants were purchased either directly from Eddy or Key or from other firms in a chain of distribution leading back to the two firms. We find that this distribution of funds would be the most equitable method of accomplishing restitution under the circumstances of this case.

In order to receive a refund, each claimant will be required to submit a schedule of monthly purchases of covered products from Eddy and Key for the period October 1, 1973 through January 28, 1981. If the products were not purchased directly from Eddy or Key, the claimant will be required to include a statement setting forth his or her reasons for believing the product originated with one of the two firms. *See, e.g., Standard Oil Co. (Indiana)/Union Camp Corp.*, 11 DOE ¶85,007 (1983). In addition, a reseller or retailer of refined petroleum products that files a claim generally will be required to establish that it was injured by the alleged overcharges. To make this showing, each reseller or retailer will be required initially to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement: In the Matter of Ada Resources, Inc.*, 10 DOE ¶85,029 at 88,125 (1982) (hereinafter cited as *Ada*). Moreover, a reseller or retailer applicant will have to provide some further evidence of injury, such as demonstrating that, at the time it purchased covered products from Eddy or Key, market conditions would not permit it to increase its prices in order to pass through the additional costs associated with the alleged overcharges. *See Office of Special Counsel*, 10 DOE ¶85,048 at 88,215 (1982) (hereinafter cited as *Amoco*).

As in many prior special refund cases, we will adopt certain presumptions in order to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider refund application in the most efficient way possible. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section

205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). Both of the presumptions that we are adopting are desirable from an administrative standpoint because they allow the OHA to process a large number of refund claims quickly and efficiently.

We will first adopt a presumption that the alleged overcharges were spread equally over all gallons of product marketed by Eddy and Key during the consent order period. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim it suffered a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Products Co./ Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

We will also adopt a presumption that reseller or retailer claimants seeking refunds of $5,000 or less, exclusive of interest, were injured by the alleged pricing practices settled in the Eddy/ Key consent order. As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). In the case of small claims, a firm's cost of gathering detailed factual information regarding the impact of alleged overcharges that took place many years ago, and the OHA's cost of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. We believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable in this case because the refund amount is fairly low, and the early months of the consent order period are quite distant. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and case cited therein.(*2*) Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below the $5,000 threshold level.(*3*)

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at ¶ 88,209 and cases cited therein. We have therefore concluded that end-users of Eddy and Key petroleum products need only document their purchase volumes from Eddy or Key to make a sufficient showing that they were injured by the alleged overcharges.

If a reseller or retailer made only spot purchases from Eddy or Key, however, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, Economic Regulatory Administration: In the Matter of Vickers Energy Corp., 88 DOE ¶ 82,597 at 85,396–97 (1981). We believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Eddy or Key refined petroleum products. *See Amoco* at 88,200.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by the total gallonage of the products covered by the consent order. The refund amount in this case will be $.000635 per gallon ($244,000 received from Eddy and Key divided by 384,445,000 gallons of refined petroleum products sold by the firms during the audit period), exclusive of interest. (*4*) Refunds will be calculated by multiplying eligible purcase volumes by the per-gallon refund amount. Although we are adopting a volumetric method for allocating refunds, any claimant that believes it suffered a disproportionate share of the alleged overcharges may submit evidence to support its claim to a larger refund. Successful claimants will also receive a proportionate share of the interest accrued on the consent order since it was remitted to the DOE.

Since Eddy and Key are paying the consent order amount in monthly installments, the entire amount will not be on deposit in the escrow account until April 1986. Thus it is possible that we will be in a position to grant refunds in excess of the current balance of the escrow account. To avoid this situation, we propose to delay processing of all applications for refund in this proceeding until the close of the application period. If at that time, the balance of the escrow account is insufficient to cover the amount of approved refunds, we will disburse refunds, on a pro rata basis, at such a percentage of the approved refund amounts that the account will not be overdrawn. The unpaid portion of an applicant's refund amount will be disbursed at such a time when sufficient funds are on deposit in the escrow account to cover all remaining unpaid refund amounts.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225.

III. Application for Refund

An application must be in writing, signed by the applicant, and specify that it pertains to the Eddy/Key Consent Order Fund, Case Number HEF-0206. An applicant should indicate the type or types of product it purchased, and from whom the product was purchased. If the applicant is not a direct purchaser from Eddy or Key, it should also indicate the basis for its belief that the product that it purchased originated from Eddy or Key. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it

was injured by the alleged overcharges. Each applicant should specify how it used the Eddy of Key product, indicating whether it was a reseller or ultimate user. If the applicant is a reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish the OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1, 1973, through January 27, 1981. If the applicant is a reseller, it must also submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible. An applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during while its application for refund is being considered. *See* 10 CFR 205.9(d). Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, each applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

Each application for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and must submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Eddy/Key Consent Order Refund Proceeding, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Applications for refund of a portion of the Eddy/Key consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.** *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It is therefore ordered that:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Eddy Refining Company and Key Oil Company pursuant to the consent order executed on July 19, 1983, may now be filed.

(2) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.**

George B. Breznay,

Director, Office of Hearings and Appeals.

Dated: January 18, 1985.

Notes

(1) During the period from August 1 through December 31, 1977, Eddy made voluntary refunds to its customers in the amount of $432,733. The two firms have agreed to pay the additional $244,000 "in full settlement of all remaining DOE challenges to prices paid by purchasers of refined petroleum products from Eddy and/or Key" during the period October 1, 1973 through January 28, 1981. Consent Order at 7.

(2) In Texas Oil & Gas Corp., 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case.

(3) In this case, the presumption of injury for small claims not exceeding the $5,000 threshold figure is equivalent to purchases of approximately 90,000 gallons per month during the Eddy/Key consent order period. Resellers or retailers who claim a refund in excess of $5,000 but cannot furnish any further evidence of injury, or who choose to limit their claims to the threshold amount, will be eligible for a refund for up to the $5,000 threshold amount without being required to submit further evidence of injury. *See* Office of Enforcement, Economic Regulatory Administration: In the Matter of Vickers Energy Corp., 8 DOE ¶ 82,597 at 85,396 (1981); *see also* Ada at 88,122.

(4) Eddy sold 384,445,000 gallons of refined petroleum products during the consent order period. According to Eddy, Key and the DOE audit of the two firms, Key purchased all or substantially all of its covered products from Eddy during the period. Consequently the combined total sales volume of the two firms is approximately equal to Eddy's sales volume, and we have determined that we will use the Eddy figure in our calculations of the volumetric refund amount.

[FR Doc. 85-2576 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Hendel's, Inc.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $155,882 (plus accrued interest) obtained as the result of a Consent Order which the DOE entered into with Hendel's, Inc. The funds will be available to customers that purchased motor gasoline from Hendel's during the period January 1, 1979 through January 31, 1980.

DATE AND ADDRESS: Applications for refund of a portion of the Hendel's consent order funds must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Hendel's Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All applications should conspicuously display a reference to Case Number HEF-0089.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Hendel's, Inc. which settled possible pricing and allocation violations with respect to the firm's sales of motor gasoline during the period January 1, 1979 through January 31, 1980. Under the terms of the Consent Order, $155,882 has been remitted by Hendel's and is being held in an interest-bearing escrow account pending determinations of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper

disposition of the Hendel's consent order funds. The Proposed Decision and Order discussing the distribution of the Hendel's consent order funds was issued on July 26, 1984. 49 FR 31484 (August 7, 1984).

As the Hendel's Decision and Order indicates, applications for refunds from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the Federal Register.

Applications will be accepted from customers who purchased motor gasoline from Hendel's during the period January 1, 1979 through January 31, 1980. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: December 28, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Hendel's, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF-0089.

Pursuant to the Department of Energy (DOE) procedural regulations, 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) in connection with a Consent Order entered into with Hendel's, Inc. (Hendel's). The petition requests that the OHA formulate and implement procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations.

I. Background

Hendel's is a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR § 212.31, and is located in Waterford, Connecticut. The firm was subject to the Mandatory Petroleum Price and Allocation Regulations set forth in 10 CFR Part 211 and Part 212, Subpart F, until January 28, 1981, when motor gasoline and other refined petroleum products were exempted from price and allocation controls. Exec. Order No. 12287, 46 FR 9909 (January 30, 1981). An ERA audit of Hendel's records revealed possible regulatory violations in the amount of $134,231 with respect to the firm's sales of motor gasoline during the period January 1, 1979 through January 31, 1980 (the audit period). In order to settle all claims and disputes between Hendel's and the DOE regarding the firm's compliance with the price regulations in sales of motor gasoline during this period, Hendel's and the DOE entered into a Consent Order on December 31, 1980, in which Hendel's agreed to remit $155,882 to the DOE. (*1*) The Hendel's Consent Order refers to the ERA's allegations of pricing and allocation violations, but makes no findings of violation. Additionally, the Consent Order states that Hendel's does not admit that it committed such violations. The Consent Order payment to the DOE was deposited in an interest-bearing escrow account for ultimate distribution by the DOE in accordance with applicable laws and regulations.

On July 26, 1984, we issued a Proposed Decision and Order (PDO) tentatively setting forth procedures to distribute refunds to parties who were injured by Hendel's alleged regulatory violations in its sales of motor gasoline. *See Hendel's, Inc.*, Case No. HEF-0089 (July 26, 1984) (Proposed Decision), 49 FR 31484 (August 7, 1984). In the PDO, we described a two-stage process for distribution of the funds made available pursuant to the Hendel's Consent Order. Specifically, we proposed to disburse funds in the first stage to claimants who could demonstrate that they were injured by Hendel's alleged violations during the consent order period. (*2*) We stated that the money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process and we pointed out that the ultimate disposition of those second-stage funds would not be determined until after completion of the first stage.

The purpose of the Decision is to establish procedures to be used for filing and processing claims in the first stage of the Hendel's refund process. This Decision sets forth the information that a purchaser of motor gasoline from Hendel's should submit in order to establish eligibility for a portion of the consent order funds. We will not, however, determine second-stage procedures in this Decision. Our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the funds. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) (*Coline*). It would therefore be premature for us to address the issues raised by commenters concerning the proposed disposition of funds remaining after all the meritorious first-stage claims have been paid. (*3*)

II. Jurisdiction and Authority to Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as part of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable readily to identify the persons or firms who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's or firm's injuries. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982). For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Coline* and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

III. Determination of Injury and Refund Amounts

Resellers filing refund claims based upon Hendel's alleged pricing violations were in a position to pass on any overcharges to their customers. We therefore stated in the PDO that such claimants generally would be required to establish that they absorbed the alleged overcharges. We proposed that to make this showing, they would have to demonstrate that, at the time they purchased motor gasoline from Hendel's, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, we proposed that resellers be required to show that they maintained "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover those costs by increasing their prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982). We noted that the maintenance of a bank would not, however, automatically establish injury.

Since we did not receive any comments in opposition to our proposed requirements regarding the foregoing showing of injury, we will adopt these proposals in this proceeding. We will also adopt certain presumptions proposed in the PDO which have been used in many prior special refund cases. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of motor gasoline made by Hendel's during the consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with

respect to small claims based upon Hendel's alleged overcharges.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of covered products marketed by a particular firm. In the absence of better information, this assumption is sound because of the manner in which the DOE price regulations required a regulated firm to account for increased costs in determining its prices. However, we also recognize that an individual applicant may have borne a disproportionate percentage of the alleged overcharges; therefore, any purchaser is allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the pro rata amount determined by the volumetric presumption. *See, e.g., Amtel, Inc.* 12, DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984). Based on the information available to us, the volumetric refund amount will be $0.008297 per gallon ($157,911 divided by 4,392,310 gallons of motor gasoline sold by Hendel's during the consent order period). Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus a proportionate share of the interest accrued on the consent order fund since it was remitted to the DOE.

The presumption that reseller claimants seeking refunds up to a certain threshold level were injured by the pricing practices settled in the Hendel's consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982) (*Uban*). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and, in the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine claims quickly, and therefore to make efficient use of its limited resources. Finally, we know that these smaller claimants did purchase covered products from Hendel's and were in the chain of distribution where the alleged overcharges occurred, and therefore that they did bear some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on monthly purchases below a threshold level. Like many previous OHA refund decisions, the PDO expressed this threshold in terms of a purchase volume figure; in this case it was 50,000 gallons per month. In *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984) (*TOGCO*), however, we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. The same approach should be followed in this case. The adoption of a threshold level below which a claimant does not have to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In this case, where the potential per gallon refund to be gained is fairly low, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable.(4) *Id.; see also Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, other businesses were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also TOGCO*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that end-users of Hendel's motor gasoline need only document their purchase volumes from Hendel's in order to make a sufficient showing that they were injured by the firm's alleged overcharges.

Since we have received no comments objecting to it, we shall also adopt our proposal to establish a minimum refund amount of $15.00 for first-stage claims. In prior special refund cases, we have not approved refunds for less than $15.00 because the cost to the public of issuing such small refunds exceeds the restitutionary benefits that may be achieved. *See, e.g., Uban* 9 DOE at 85,225 (1982).

V. Applications for Refund Procedures

After having considered the first-stage procedures tentatively adopted in our July 6 proposed decision, we have concluded that applications for refunds should now be accepted from parties who purchased Hendel's motor gasoline during the consent order period.(5) Applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**.(6) *See* 10 CFR § 205.286. An application must be in writing signed by the applicant, and specify that it pertains to the Hendel's Consent Order Fund, Case No. HEF–0089.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of

the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. Any claimant whose application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application must indicate whether the applicant or any person acting on its instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying Hendel's enforcement proceeding. Each application must also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. § 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Hendel's Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the Hendel's consent order funds, the following subjects should be covered in applications for refund:

A. Each applicant should report its volume of Hendel's motor gasoline purchases by month for the period of time for which it is claiming that it was injured by the alleged overcharges.(7)

B. Each applicant should specify how it used the Hendel's motor gasoline—i.e., whether it was a reseller or an end-user.

C. Each applicant should state whether it was in any way affiliated with Hendel's. If so, it should specify the nature of that affiliation.

D. Each applicant should state whether there has been any charge in ownership of the entity that purchased motor gasoline from Hendel's since the end of the audit period. If so, the name and address of the former (or current) owner should be provided.

E. Each applicant should report whether it is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

F. If the applicant is a reseller who wishes to claim a refund based upon Hendel's alleged overcharges in excess of $5,000 if should also:

(i) State whether it maintained banks of unrecouped product cost increases from the date of the alleged violation until motor gasoline was decontrolled. It should furnish OHA with quarterly bank calculations;(8)

(ii) submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

G. If the applicant is a reseller who wishes to claim a refund in excess of the per gallon volumetric amount, it must, in addition to providing the information specified in paragraph F, submit evidence which establishes that it was injured by alleged overcharges on a per gallon basis at a level greater than the volumetric amount.

H. Each applicant should state whether it was a spot purchaser of the Hendel's motor gasoline.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by Hendel's Inc. pursuant to the Consent Order executed on December 31, 1980, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: December 28, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(1) This amount represents the $134,231 Hendel's allegedly overcharged its customers plus $21,651 in interest accrued through November 30, 1980. Hendel's also paid an additional $2,029 in interest accrued from December 1, 1980 to January 13, 1981, the date payment was made to the DOE. The total amount currently held by the DOE is therefore $157,911, plus interest accrued since January 13, 1981.

(2) In the present case, the consent order period is the same as the audit period, January 1, 1979 through January 31, 1980.

(3) Comments on the second-stage refund procedures were filed by the states of Arkansas, Connecticut, Delaware, Kansas, Iowa, Louisiana, New Mexico, North Carolina, North Dakota, Rhode Island, and West Virginia. These states argue that any consent order funds remaining after refunds are made in the first-stage of this proceeding should be distributed to the states for use in energy-related projects.

(4) In the PDO we proposed that spot purchasers not be eligible for refunds because they would not have made spot market purchases of Hendel's product at increased prices unless they were able to pass through the full amount of the firm's selling price at the time of purchase to their own customers. Such firms would then be ineligible for any refund, including one at or below the threshold level. We stated that in order to overcome the rebuttal presumption that they were not injured, spot purchasers would need to submit additional evidence to establish that they were unable to recover the increased prices they paid to Hendel's. *See Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). No one has challenged this proposal. Accordingly, we will adopt it in this proceeding.

(5) If a refund claimant has sold its business, it will be required to provide the name and address of the new owner so that a determination as to the appropriate recipient of any refund may be made. If the claimant has purchased a firm that was a Hendel's customer during the consent order period, the name and address of the owner during that period must be provided.

(6) As we stated in the PDO, in addition to publishing copies of this Decision in the **Federal Register**, copies will be provided to the Hendel's customers whose names and addresses we have obtained from the ERA audit file. We also intend to publicize this proceeding in local newspapers in the areas where Hendel's sold motor gasoline.

(7) We recognize that even the showing of purchase volumes may be difficult for some applicants. Therefore, we will accept certified purchase estimates from claimants provided that (a) they make a showing that it is excessively difficult for them to establish actual purchase figures and that the method used in deriving the estimates is reasonable, and (b) information as to the firm's purchase volumes obtained from Hendel's gives us no reason to question the validity of those estimates. *See Aztex Energy Co.*, 12 DOE ¶ ——— No. HEF-0032 (November 29, 1984). Resellers who use such estimates and claim refunds in excess of the threshold will still be required to document the extent of injury sustained. *See TOGCO*, 12 DOE at 88,209.

(8) The bank requirement for retailers was eliminated in the amendments to the retailer price rule effective July 15, 1979, 44 FR 42542 (July 19, 1979). Therefore, no showing of cost banks will be required of motor gasoline retailers after that date.

[FR Doc. 85-2577 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; McCarty Oil Co., Inc. and Nielsen Oil and Propane, Inc.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $50,594.11 obtained as the result of a consent order which the DOE entered into with McCarty Oil Company, Inc., a reseller of petroleum products located in Wapakoneta, Ohio, and $46,000.00 obtained as the result of a consent order which the DOE entered into with Nielsen Oil and Propane, Inc., a reseller of petroleum products located in West Point, Nebraska. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Office of Special Counsel.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF–0126 (McCarty) or HEF–0136 (Nielsen).

FOR FURTHER INFORMATION CONTACT: Douglas Friedman, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with Section 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $50,594.11 plus accrued interest obtained by the DOE under the terms of a consent order intered into with McCarty Oil Company, Inc. and $46,000 plus accrued interest obtained by the DOE under the terms of a consent order intered into with Nielsen Oil and Propane, Inc. The funds were provided to the DOE by the firms to settle all claims and disputes between the firms and DOE regarding the manner in which they applied the federal price regulations with respect to their sales of refined petroleum products during the respective consent order periods. The McCarty consent order covers the period from April 1, 1979, through September 30, 1979. The Nielsen consent order covers the period from March 1, 1979, through December 31, 1979.

OHA proposes that a two-state refund process be followed. In the first stage, OHA has tentatively determined that a portion of the McCarty consent order funds should be distributed to 22 first purchasers who may have been overcharged and a portion of the Nielsen consent order funds to 13 first purchasers who may have been overcharged. In order to obtain a refund, each claimant will be required either to submit a schedule of its monthly purchases from McCarty or Nielsen or to submit a statement verifying that it purchased petroleum products either from McCarty or from Nielsen and is willing to rely on the data in the audit files. Certain firms will also be required to make specific demonstrations of injury. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. These purchasers will be required to provide specific documentation concerning the date, place, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: January 7, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firms: McCarty Oil Company, Inc. and Nielsen Oil and Propane, Inc.

Date of Filing: October 13, 1983.

Case Numbers: HEF–0126 and HEF–0136.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Offie of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process is typically used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶82,508 (1982), and *Office of Enforcement*, 8 DOE ¶82,597 (1981).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with consent orders entered into with McCarty Oil Company, Inc. (McCarty) and Nielsen Oil and Propane, Inc. (Nielsen). Both firms are "reseller-retailers" of refined petroleum products as that term was defined in 10 CFR 212.31. McCarty's main office is in Wapakoneta, Ohio. Nielsen is located in West Point, Nebraska. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a separate consent order with the DOE. The Consent Orders refer to ERA's allegations of overcharges, but note that there were no findings that violations occurred. Additionally, the Consent Orders state that the consenting firms do not admit that they committed violations. A brief discussion of the pertinent matters covered by each consent order follows.

The McCarty consent order covers the period April 1, 1979, through September 30, 1979. The DOE audit alleged that during that period, the firm committed possible pricing violations amounting to $78,140.53 with respect to its sales of motor gasoline. In order to settle all claims and disputes between McCarty and the DOE regarding the firm's sales of motor gasoline during the audit period, McCarty and the DOE entered into a consent order on February 24, 1981. Under the terms of the consent order, McCarty agreed to make refunds amounting to $53,000 (including interest). Separate processes were established by which McCarty would refund money to injured parties. First, $2,405.89, representing alleged overcharges on sales to end users, was to be refunded

directly to those purchasers. In addition, $50,594.11, representing alleged overcharges with respect to sales of motor gasoline to certain wholesale purchasers was to be deposited by McCarty into an interest-bearing escrow account for ultimate distribution by the DOE. McCarty deposited the $50,594.11 over a two-year period ending February 24, 1983.(1)

The Nielsen consent order covers the period from March 1, 1979, through December 31, 1979. The DOE audit of Nielsen revealed possible pricing violations amounting to $127,177.22 during the audit period. In order to settle all claims and disputes regarding Nielsen's sales of motor gasoline and propane during the audit period, on August 31, 1981, Nielsen and the DOE entered into a consent order. Under the terms of the consent order, Nielsen was to deposit $46,000 into an interest-bearing escrow account for ultimate distribution by the DOE. Nielsen remitted this sum on April 22, 1981, in advance of the effective date of the consent order.(2)

This Decision concerns the distribution of the funds deposited into escrow accounts by McCarty and Nielsen.

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶82,508 (1981), *and Office of Enforcement*, 8 DOE ¶82,597 (1981).

Based on our experience with Subpart V cases, we believe that the distribution of refunds in these proceedings should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined peteroleum products who may have been injured by McCarty's pricing practices during the period April 1, 1979, through September 30, 1979, or by Nielsen's pricing practices during the period March 1, 1979, through December 31, 1979. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

The basic purpose of a special refund proceeding is to recompense parties who were injured as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have decided to rely in part on the information contained in the DOE's audit files. Our experience with similar cases supports the use of this approach in Subpart V cases where all or most of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination can be made regarding the identity of the allegedly overcharged parties and the amount of the alleged overcharges to each.

During the DOE's audit of McCarty, 37 first purchasers were identified by ERA as having allegedly been overcharged. In the audit of Nielsen, 44 first purchasers were identified by ERA as having allegedly been overcharged. While the DOE audit files represent only preliminary determinations, do not necessarily reflect actual overcharges, nor provide conclusive evidence as to the identity of possible refund recipients or the amount of money that they should receive in a Subpart V proceeding, it is reasonable to use the information contained in the audit files for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 10 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified by the audit. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ —, Case No. HEF-0165 (December 10, 1984); *Midwest Industrial Fuels, Inc.*, 12 DOE ¶ —, Case No. HEF-0130 (December 11, 1984). The first purchasers identified by the audits, along with the share of the settlement amount allotted to each by ERA, are listed in Appendices A-1, A-2, B-1, B-2, and B-3.

Identification of first purchasers is only the first step in the distribution process. We must also consider whether the first purchasers suffered injury or were able to pass through the alleged overcharges. Besides considering the information which the audit file provides, we will also adopt certain presumptions in order to distribute the escrow accounts in this case. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations state that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions and findings we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. As in previous special refund procedures, we intend to adopt rebuttable presumptions that claimants seeking small refunds were injured by McCarty's and Nielsen's pricing practices and that spot purchasers who were resellers were not injured. In addition, we are making a proposed finding that end users suffered injury.

The presumption that claimants seeking small refunds were injured is based on a number of considerations. Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a detailed claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could be many times the expected refund amount. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. The presumption adopted here eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the presumptions we are adopting, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund

claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, and the early months of the consent order period are quite distant, we believe that the establishment of a presumption or injury for all claims of $5,000 is reasonable.(3) *See Texas Oil & Gas Corp.; Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. The record in this proceeding reveals that those firms listed in Appendix A–2 made only spot purchases from McCarty, and those listed in Appendix B–3 made only spot purchases from Nielsen. We propose that firms on those lists not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of motor gasoline from McCarty, or motor gasoline or propane from Nielsen, during the applicable consent order period.

As noted above, we are making a proposed finding that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisons on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We therefore propose that end users of Nielsen petroleum products need only document their purchase volumes from Nielsen to make a sufficient showing that they were injured by the alleged overcharges.(4)

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of McCarty's or Nielsen's alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel, 9 DOE* ¶ 82,539 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, we will establish a minimum refund amount of $15 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). *See also* 10 CFR 205.286(b).

On the basis of the information in the record at this time, we propose to distribute a portion of the escrow funds to those firms listed in Appendices A–1, B–1, and B–2 to whom refunds would exceed $15. Refunds will be authorized for those firms in the amounts indicated, plus accrued interest to the date they receive refunds, provided they make any showings of injury which are necessary.(5) We note that we have no addresses available for the firms listed in Appendix B–2. In an attempt to better identify and to locate these firms, we will provide Nielsen and various petroleum dealers' associations in Iowa, Kansas, and Nebraska with copies of this proposed decision, in addition to publishing notice in the **Federal Register**. We will accept information regarding the identity and present location of each of these firms for a period of 90 days from the date of publication of notice of a final Decision and Order in this proceeding in the **Federal Register**.(6)

We also recognize that there may have been other first purchasers not identified by the ERA audit, as well as downstream purchasers, who may have been injured as a result of McCarty's or Nielsen's pricing practices during the audit period and would therefore be entitled to a portion of the consent order funds. If additional meritorious claims are filed, we will adjust the figures listed in the Appendices accordingly. Actual refunds will be determined only after analyzing all appropriate claims.(7)

In order to receive a refund, each claimant will be required either to submit a schedule of its monthly purchases of gasoline from McCarty or gasoline and/or propane from Nielsen, or to submit a statement verifying that it purchased petroleum products from McCarty or from Nielsen, and is willing to rely on the data in the audit file. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audits underlying these proceedings. Purchasers not identified by the ERA audit will be required to provide specific information concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be

paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

B. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund procedure has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amounts remitted to the Department of Energy by McCarty Oil Company, Inc. pursuant to the consent order executed on February 24, 1981, and by Nielsen Oil and Propane, Inc. pursuant to the consent order executed on August 31, 1981, will be distributed in accordance with the foregoing decision.

Footnotes

(1) As of November 30, 1984, the McCarty escrow account contained $65,322.28, including accrued interest.

(2) As of November 30, 1984, the Nielsen escrow account contained $86,980.86, including accrued interest.

(3) Resellers who claim a refund in excess of $5,000 who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury. Resellers potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to prove their injury. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

(4) McCarty made direct refunds to its customers who were end users. Those firms are therefore not eligible to apply for refunds in this proceeding, and the finding regarding end users in thus not relevant to first purchasers of McCarty products. However, downstream purchasers whose suppliers did not absorb the alleged overcharges will be covered by this finding, as well as by all other presumptions.

(5) The share of the McCarty escrow fund allocated to each firm listed in Appendices A–1 and A–2 represents 68.55 percent of the amount each was allegedly overcharged. The share of the Nielsen escrow fund allocated to each firm listed in Appendices B–1, B–2, and B–3 represents 36.17 percent of the amount each was allegedly overcharged. These figures are consistent with the terms of the McCarty and Nielsen consent orders, which settled for 68.55 and 36.17 percent, respectively, of the total amount of overcharges alleged in the respective audits.

(6) If we are unable to locate any firm listed in Appendix A–2, we will reserve any funds allocated to that firm for distribution in a subsequent proceeding.

(7) Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they should receive refunds larger than those indicated.

APPENDIX A–1.—MCCARTY FIRST PURCHASERS

Firm	Share of settlement [1]
Agri-Urban, 818 South U.S. 42, Lebanon, Ohio 45036	$298.19
Auglaiza Landmark, Wapa Threatre Building, Wapakoneta, Ohio 45895	1,027.77
Butler Landmark, P.O. Box 626, Hamilton, Ohio 45012	75.38
C & D Oil, Inc., Paulding, Ohio 45879	504.60
Darke Landmark, Inc., 619 Sater, Greenville, Ohio 45331	504.86
Dayton South Truck Stops, Franklin, Ohio 45005	2,399.26
Garner's Truck Service, P.O. Box 96, Jeffersonville, Ohio 43128	243.65
Hancock Landmark, 6566 Company Road No. 236, Findlay, Ohio 45840	480.00
Hertz Corporation, 660 Madison Avenue, New York, New York 10021	13,277.60
Interpoint Corporation, 6 South Wabash Avenue, Chicago, Illinois 60603	2,896.85
King-Kwik, 3870 Virginia Avenue, Cincinnati, Ohio 45227	462.23
Lin-mor, 110 Ash Street, Lindsey, Ohio 43442	4,926.83
May's Oil Company, 113 S. College Street, Piqua, Ohio 45356	135.14
Mercer Landmark, 715 West Logan Street, Celina, Ohio 45822	912.22
Midwood Landmark, P.O. Box 799, Bowling Green, Ohio 43402	297.15
Minister Farmers Co-op, 292 Fourth Street, Minster, Ohio 45865	1,389.23
Minstar Oil Company, 185 West Fourth Street, Minster, Ohio 45865	1,743.77
Ottawa Oil Company, 105 East Fourth Street, Ottawa, Ohio 45875	3,091.76
Ralph's Sunoco, 2001 Needmore Road, Dayton, Ohio 45415	1,176.70
Slattery Oil Company, 306 Defiance Avenue, Hicksville, Ohio 43526	6,405.85
Union 76 Tourist Stop (Dayso), 235 South Main Street, Monroe, Ohio 45050	1,009.36
Wapak Truck Plaza, RRI, Wapakoneta, Ohio 45895	2,166.39

[1] Not including accrued interest.

APPENDIX A–2.—MCCARTY SPOT PURCHASERS

Firm	Share of settlement [1]
Auto Truck Rental, 401 E. Fifth Street, Dayton, Ohio 45402	$257.06
Central Transport, 34200 Mound Road, Sterling Heights, Michigan 48077	440.13
Champaign County Landmark, 304 Bloomfield Avenue, Urbana, Ohio 43078	164.43
Clark Landmark, 821 N. Belmont Street, Springfield, Ohio 45503	237.72
Clinton Company, S.R. #3, Wilmington, Ohio	230.13
G & L Oil Company, 80 Hopewell Street, Triffin, Ohio 44683	191.72
Highland Landmark, P.O. Box 70, Hillsboro, Ohio 45133	108.51
Interstate Truck Stops, c/o Claire Fisher, 1333 Mercer Road, Jerome, Michigan 49249	424.58
Madison County Landmark, 254 W. High Street, London, Ohio 43140	155.58
Montgomery Landmark, 4136 Gardendale, Dayton, Ohio	79.22
Paulding Landmark, P.O. Box 243, Paulding, Ohio 45879	367.43
Watkins Oil Company, P.O. Box 195, Hillsdale, Michigan 49242	1,478.56
C. Wright Truck Stop, c/o Barry Groathouse, 2420 State Route 703 East, Celina, Ohio 45822	266.93
XCEL Products, 14th Floor, 2900 North Loop West, Houston, Texas 77092	569.10

[1] Not including accrued interest.

APPENDIX B–1.—NIELSEN FIRST PURCHASERS

Firm	Share of settlement [1]
Al's Place, Crofton, Nebraska 68730	$386.22
Barger Oil, 805 South 13th, Tekamah, Nebraska 68061	714.86
Casey's General Store, P.O. Box 3288, Des Moines, Iowa 50316	10,959.40
Fisca Oil, 8242 Maple Street, Omaha, Nebraska 68134	10,880.49
Gas 'N' Shop, Box 81463, Lincoln, Nebraska 68501	5,117.51
Jim Hakel, Hakel Oil, Weston, Nebraska 68070	22.17
Highway Oil, 12th Floor, 1st National Building, Topeka, Kansas 66603	5,470.69
Kratke Oil, Wakefield, Nebraska 68784	1,063.66
Kookie's Kwiki, Oakland, Nebraska 68045	[2] 5.01
Lueders Oil, Wisner, Nebraska 68791	190.18
Neska Oil, 4th & Whitney, Pender, Nebraska 68047	1,081.28
David Scharff, Riteway Service Route 6, Columbus, Nebraska 68601	2,121.12
Shortstop East, 235 West 19th Street, Fremont, Nebraska 68025	2,902.76
Soil Oil Co., Bancroft, Nebraska 68004	1,061.28
Smidt Standard, West Point, Nebraska 68788	[2] 1.84

[1] Not including accrued interest.

[2] As noted in the body of this Proposed Decision, we do not intend to grant claims for less than $15.00.

APPENDIX B–2.—NIELSEN FIRST PURCHASERS, NO ADDRESS AVAILABLE

Firm	Share of settlement [1]
Downing Oil	$239.42
Ginna	617.00
Kerr-McGee (retail station)	278.60
P.J. Martens	147.69
Pokorny Oil	355.14
Schuzler Oil	342.12
Yankton Derby	35.49

[1] Not including accrued interest.

APPENDIX B–3.—NIELSEN SPOT PURCHASERS

Firm	Share of settlement [1]
J. Adams, 1500 East Front Street, Fremont, Nebraska 68025	$4.99
Bingo Oil	56.60
Blackman Standard	159.52

APPENDIX B-3.—NIELSEN SPOT PURCHASERS—Continued

Firm	Share of settlement [1]
Blair Mini-Market	198.57
Crest Oil, 1545 Cornhusker Highway, Lincoln, Nebraska 68521	157.46
Chadwick's Self-Service, Wisner, Nebraska 68791	76.99
Fina Oil	42.17
Farmers Co-op	96.70
Jones Oil	47.34
Kersten & Lee	202.41
Konecky, Cedar Bluffs, Nebraska 68015	109.48
Liberty Oil, 112 North 13th Street, Omaha, Nebraska 68102	42.74
Lincoln Oil, Box 82231, Lincoln, Nebraska 68500	276.19
M & M Service	44.43
Merchant Oil	18.46
7-11, Store #104	26.48
7-11, Store #107	76.55
7-11, Store #118, Omaha, Nebraska	41.01
Stubbendick Oil	104.75
Sapp Brothers, P.O. Box 37446, Omaha, Nebraska 68137	178.92
E.T. Thompson, Blair, Nebraska 68008	39.06
Ziegler Oil, Monroe, Nebraska 68647	3.07

[1] Not including accrued interest.

[FR Doc. 85-2589 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Union Texas Petroleum Corp.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy gives notice of the procedures to be followed in refunding a total of $3,225,000 (plus accrued interest) in consent order funds to members of the public. The funds are being held in escrow pursuant to two separate consent orders involving Union Texas Petroleum Corporation (UTP), a subsidiary of Allied Corporation.

DATE AND ADDRESS: Applications for refund of a portion of the UTP consent order funds must be filed within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Union Texas Petroleum Corporation Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All applications should conspicuously display a reference to Case Number HEF-0009 or HEF-0224, or both.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with Section 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to two separate consent orders entered into by Union Texas Petroleum Corporation (UTP), a subsidiary of Allied Corporation, which settled possible pricing and allocation violations in the firm's sales of crude oil and refined petroleum products during the period January 1, 1973 through January 28, 1981. Under the terms of the consent orders, a total of $3,225,000 (plus accrued interest) has been remitted by UTP and is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established two separate refund proceedings, each consisting of two stages, and soliciting comments from interested parties concerning the proper disposition of the funds. The Proposed Decision and Order was issued on January 11, 1984. 49 FR 3125 (January 25, 1984).

The Decision and Order published with this Notice reflects an analysis of the comments received from interested parties. As the Decision indicates, applications for refund from the two consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register.** While the specific information required in an application for refund is set forth in the Decision, the following is a brief summary of the two UTP refund proceedings:

Case No. HEF-0224

The relevant consent order was adopted by the DOE on January 19, 1981. The consent order fund totals $1,325,000 plus accrued interest. This refund proceeding is limited to UTP products purchased by specified classes of purchaser during definite periods of time, as follows:

Product	Class description	Consent-order period
Propane	"Petrochemical-Geismar Plant Joint Interest Owners".	8-19-73—5-1-76
Propane	"Wholesale-Williams Brothers".	8-19-73—5-1-76
Motor gasoline	"Jobber-San Antonio"	8-19-73—6-1-76
Diesel fuel	"Wholesale-Miller Oil Co. and Raymond Lee".	8-19-73—6-1-76

Source: Consent order, exhibit 1.

Case No. HEF-0009

The relevant consent order was adopted by the DOE on September 14, 1982. The consent order fund totals $1,900,000 plus accrued interest, and covers all sales by UTP of crude oil and refined petroleum products subject to federal price and allocation regulations, provided the purchases were made during the particular period the crude oil or product was subject to such regulations, with the following exceptions:

1. All transactions covered by the January 1981 consent order described above;
2. All crude oil sales covered by a third UTP consent order not the subject of these proceedings but described in the Decision.
3. Any claims related to UTP's entitlements obligations for the month of January 1981 or pursuant to the entitlements "clean-up" rule.

Dated: January 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Union Texas Petroleum Corporation.

Dates of Filing: December 22, 1982 and October 13, 1983.

Case Numbers: HEF-0009 and HEF-0224.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, on December 22, 1982 and October 13, 1983, the ERA filed two Petitions for the Implementation of Special Refund Procedures in connection with consent orders which the DOE entered into with Union Texas Petroleum Corporation (UTP), a subsidiary of Allied Corporation.

I. Background

UTP was a "producer" of crude oil and a "refiner" as those terms were defined in 10 CFR 212.31. During the period of petroleum price and allocation controls, UTP was engaged in the production, importation, refining, and sale of crude oil and covered petroleum products as well as other petroleum-related activities. Its marketing operations were concentrated in the

eastern half of the United States but extended to other areas as well. Commencing in 1973, the Cost of Living Council and later the Federal Energy Administration, predecessors of the DOE, conducted an audit to determine UTP's compliance with the federal price and allocation regulations pertaining to the production, importation, refining, and sale of crude oil and covered products. 10 CFR Parts 211 and 212. The audit encompassed a review of UTP's pricing and allocation practices and the manner in which UTP applied the relevant regulations with respect to its activities. In the course of this audit, the DOE and UTP executed a limited consent order on November 19, 1980. Notice of the proposed order was published for public comment on December 5, 1980 (45 FR 80581). The consent order was adopted without modification as a final order of the DOE on January 19, 1981 (46 FR 5049).

Under the terms of this consent order, the firm agreed to remit to the DOE the sum of $1,325,000 to be held in escrow pending a determination by the DOE as to its ultimate disposition. This consent order was specifically limited to the settlement of alleged overcharges attributable to certain sales by UTP of propane, motor gasoline, and diesel fuel during the period August 19, 1973 through June 1, 1976.

The second consent order, executed on July 9, 1982 and adopted as a final order of the DOE on September 14, 1982 (47 FR 40465), was not limited to any specific alleged violations but, instead, was virtually unlimited in scope. Under the terms of this "global" consent order, UTP agreed to remit $1.9 million to the DOE for ultimate disposition in accordance with 10 CFR Part 205, Subpart V or other applicable statutes and regulations. For its part, the DOE agreed to accept such payment in settlement of all civil and administrative disputes, claims, and causes of action by the DOE against UTP relating to UTP's compliance with federal petroleum price and allocation regulations during the period January 1, 1973 through January 28, 1981 (the global consent order period), except for UTP's entitlements obligations for the month of January 1981 or pursuant to the entitlements "clean-up" rule at 10 CFR 211.89. *See* Consent Order ¶ 501. The consent order provided, however, that the DOE reserved the right to avail itself of certain administrative or judicial remedies in the event that UTP had willfully concealed violations or misrepresented any material fact during the course of the audit and negotiations which preceded the consent order. *See* Consent Order ¶ 505.

The ERA filed its Subpart V petition with respect to the global consent order with the Office of Hearings and Appeals on December 22, 1982 (Case No. HEF-0009). The more limited 1981 consent order was one of a group of consent orders which were the subject of a consolidated Subpart V petition filed with this Office by the ERA on October 13, 1983. The special refund proceeding for the UTP consent order included in the October 13 petition was assigned Case No. HEF-0224.

For the reasons set forth below, we are establishing separate refund proceedings in connection with the two ERA petitions and underlying consent orders. Because the same firm is involved in both, however, we have consolidated both Subpart V petitions for consideration in this Decision and Order.

On January 11, 1984, the Office of Hearings and Appeals issued a Proposed Decision and Order in which we proposed to grant both of the ERA's petitions and tentatively established two separate refund proceedings, each consisting of two stages, for the disposition of the escrowed settlement funds. *Union Texas Petroleum Corp.*, 6 Fed. Energy Guidelines ¶ 90,052, 49 FR 3125 (January 25, 1984) (hereinafter cited as Proposed Decision). We stated that in the first stage we would consider Applications for Refund filed by parties who could demonstrate injury arising from the alleged violations covered by the respective consent orders. In addition, we suggested second-stage mechanisms which could be used for the distribution of any residual funds not paid out to first-stage claimants. The Proposed Decision solicited comments from interested parties and the public at large concerning the proposed procedures.

The primary purpose of this Decision and Order is to establish procedures for the filing and processing of claims in the first stage of the process of refunding the UTP funds. We will not, however, determine the procedures to be used in the second stage. All of the comments which OHA received in response to the Proposed Decision concerned second-stage procedures. As we observed in the Proposed Decision, however, a determination concerning the final disposition of any residual funds depends in part on the amount of those funds. It would therefore be premature for us to address in this Decision the issues raised by commenters concerning the proposed disposition of any funds remaining after all meritorious first-stage claims have been paid. Accordingly, we will retain these comments on file for consideration at the appropriate time.

II. Jurisdiction

Subpart V authorizes the Office of Hearings and Appeals, upon request by the appropriate enforcement official, to fashion special procedures to distribute monies obtained as a result of an enforcement proceeding. 10 CFR 205.281, 205.282. This special refund process was established as part of an overall regulatory program intended to implement several different statutes. Congress provided for mandatory allocation and price regulations for crude oil, residual fuel oil, and refined petroleum products in the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751 *et seq.* (1976). The authority to enforce regulations issued under the EPAA was granted by Section 5 of the EPAA, which incorporated enforcement authorities established in the Economic Stabilization Act (ESA), 12 U.S.C. 1904 note (1970); EPAA 5(a), 15 U.S.C. 754(a). The statutory authority to enforce the regulations governing the allocation and pricing of petroleum products was delegated to the Administrator of the Federal Energy Administration, and subsequently to the Secretary of Energy. Federal Energy Administration Act (FEAA) 5, 15 U.S.C. 765 (1974); Department of Energy Organization Act (DOE Act) 301(a), 42 U.S.C. 7151(a) (1979). To carry out these statutory mandates, the regulations of the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, and the DOE provided throughout the existence of the price control program for the issuance of remedial orders "requiring a person to cease a violation or to eliminate or compensate for the effects of a violation, or both." 6 CFR 155.81(b) (1973); 10 CFR 205.2 (1974) (defining "remedial order"). While a consent order does not involve a finding of a regulatory violation, it has the same force and effect as a remedial order. 10 CFR 205.199J.

As we stated in the Proposed Decision, the Subpart V process may be used in situations where the Department of Energy is unable readily to identify persons who may have been injured by alleged or adjudicated violations, or ascertain the amounts of such persons' injuries. 10 CFR 205.280. *Office of Enforcement*, 9 DOE ¶ 82,538 (1982) (hereinafter cited at *Tenneco*).

After reviewing the record developed in the UTP cases under consideration here, we have decided to grant the ERA's petitions and to accept

jurisdiction over both of the relevant UTP consent order funds. As we pointed out in the Proposed Decision, in each of these cases there is a significant degree of difficulty in identifying persons who were injured by any violations of the petroleum regulations and in ascertaining the level of refunds that such persons should receive. Prior to January 28, 1981, crude oil and refined petroleum products were subject to a comprehensive price regulation scheme which could be utilized to facilitate the channeling of refunds to adversely affected purchasers through price rollbacks. However, on that date the President exempted crude oil and all refined petroleum products from the DOE regulatory program. Exec. Order No. 12287, 46 Fed. Reg. 9909 (January 30, 1981). As a result of decontrol, price rollbacks can no longer be used to refund monies to purchasers who were overcharged in the past. Therefore, to refund money to those parties who may have been affected adversely by violations of the regulations, a determination must generally be made regarding the extent to which a consent order firm's customers absorbed any overcharges or passed these costs through to their customers by raising their own sales prices. Under these circumstances, Subpart V provides a useful mechanism to refund money to persons who were injured by alleged pricing or allocation violations. We will therefore grant the ERA's petitions and exercise jurisdiction over the funds received by the DOE pursuant to these two consent orders.

III. First Stage Refund Procedures

Based upon our experience with Subpart V cases, we have determined that in each of the two UTP special refund proceedings, the distribution of funds should take place in two stages. In the first stage of the process, payment should be made to persons and firms who file applications for refund and satisfactorily demonstrate that they were injured by UTP's alleged violations of the DOE regulations. As stated earlier, we will defer a determination concerning second-stage procedures until we have a sufficiently clear picture of the amount of funds remaining after first-stage claims have been satisfied.

A. Subpart V Proceeding Involving The Global Consent Order (Case No. HEF-0009)

Although the 1982 consent order is global in its coverage (except for UTP's entitlements obligations, as noted above), there are aspects of UTP's regulated petroleum activities which we consider to be outside the ambit of the special refund proceeding we are establishing in connection with that consent order. As an initial matter, claims attributable solely to those transactions covered by the earlier (January 1981) consent order should not be filed in this refund proceeding. The 1981 consent order settled allegations concerning narrowly defined products, classes of purchaser, periods of time, and types of violations. Because a smaller volume and range of products were addressed by the 1981 consent order, the amount of settlement monies available to purchasers of those UTP products, as explained below, will be significantly larger than in the case of the global consent order. Furthermore, the 1981 consent order addressed specific alleged regulatory violations, as distinct from an entire range of all possible violations embraced by the later global consent order. Presumably, therefore, any overcharges involved in the transactions covered by the 1981 settlement affected a narrower segment of UTP's customers, with a correspondingly greater degree of harm. We have therefore determined that the two refund pools should remain separate. This will permit applicants who can trace their injury to the specific allegations addressed in the 1981 consent order to demonstrate a greater injury than that experienced generally by purchasers of UTP products.

Secondly, this proceeding will not consider claims attributable to certain of UTP's crude oil transactions which were covered by a third consent order executed by UTP and DOE in March 1980. The 1980 consent order settled all claims and disputes between ERA and UTP with regard to the prices charged during the period September 1, 1973 through December 31, 1979, in sales of domestic crude oil from specific properties operated by UTP. (Those properties are listed in the Appendix to this Decision.)[1]

We have obtained information from UTP and the ERA regarding the volumes of crude oil and covered products which were sold by UTP during the global consent order period, exclusive of those sales covered by the two earlier consent orders discussed above. The consent order period for crude oil constitutes that portion of the global consent order period during which crude oil was subject to federal price and allocation controls, September 1, 1973 through January 27, 1981. UTP's sales of crude oil during that period, excluding those sales from the specified properties during the period of time covered by the 1980 crude oil consent order, totalled 21,137,160 barrels, or 887,760,720 gallons. Similarly, from information provided by UTP and the ERA, we have calculated the volumes of refined petroleum products covered by federal price controls and the global consent order. The total volume of such products sold by UTP during the relevant periods of time, excluding those volumes covered by the 1981 consent order, was 4,252,067,146 gallons.

1. Crude Oil Transactions

Crude oil pricing violations usually involved miscertifications, i.e., crude oil erroneously certified as "new" or "stripper well" crude oil and thus illegally sold at upper tier or market prices. *See generally* 10 CFR Part 212, Subpart D. As we observed in *Office of Enforcement*, 9 DOE ¶ 82,520 (1982) (hereinafter cited as *Alkek*), during most of the period of crude oil price controls the effects of regulatory violations involving the miscertification of crude oil were spread equally among all domestic refiners and arguably to consumers nationwide due to the operation of the DOE's Crude Oil Entitlements Program, 10 CFR 211.67.[2] *See Alkek*, 9 DOE at 85,133. In the present case this would be true whether UTP refined the allegedly miscertified crude oil itself or sold it to another refiner, because in either event the refiner of the crude oil would have reported in its monthly entitlements reports to the DOE the improperly certified crude oil and that incorrect figure would then have been used to calculate the domestic old oil supply ratio ("DOSR") and the reporting refiner's entitlements position. *See generally* 10 CFR 211.67. For a discussion of these effects, see *Alkek*, 9 DOE at 85,133.

In view of these considerations, we have concluded that in evaluating claims for refunds that are based upon purchases or rights to purchase crude oil from UTP, we should use criteria which differ in some respects from those applied to claims based on purchases or rights to purchase refined petroleum products. We will therefore set aside an appropriate portion of the UTP global consent order fund to be distributed in a two-stage special refund procedure of the type implemented with respect to the 24 crude oil settlement funds in the *Alkek* proceeding and the 33 crude oil settlement funds in a related proceeding, *Office of Enforcement*, 9 DOE ¶ 82,553 (1982) (hereinafter cited as *Adams*). In determining the appropriate portion of the global consent order fund to be allocated to crude oil claims, we have calculated the volume of UTP's crude oil sales (exclusive of those subsumed by

the 1980 UTP crude oil consent order) as a percentage of its total volume of crude oil and refined products sold during the global consent order period (again exclusive of volumes subsumed by the 1980 and 1981 consent orders). This figure, 20.88 percent, when applied to the total global consent order fund of $1.9 million, yields a refund pool of $396,700 (to which appropriate interest will be added at the time of distribution) to be set aside for payment of refund claims involving sales of crude oil.(3) We will make available the remaining $1,503,300, which is not attributable to crude oil transactions, for distribution to purchasers of UTP's refined petroleum products (exclusive of transactions covered by the 1981 refined products consent order) during the global consent order period.

As in *Alkek*, the crude oil pool will first be distributed among applicants who successfully establish in their applications for refund that they suffered a particularized injury that was not redressed by the regulatory system. For example, a firm that purchased and refined UTP crude oil prior to November 1, 1974, the first month of the Entitlements Program, could be a claimant, *see Alkek*, 9 DOE at 85,137, as could a firm claiming a "posted price" violation.(4) In addition, a successful applicant must demonstrate actual injury—i.e., that the effects of the alleged regulatory infraction were absorbed by it, and not simply passed through to its customers in the form of higher prices for its refined products. *See Tenneco Oil Co./Plateau, Inc.*, 10 DOE ¶ 85,015 (1982) (injury above threshold level not demonstrated). In this regard, we are establishing a rebuttable presumption that spot purchasers were not injured by UTP's crude oil pricing practices. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982) (*Amoco*). In the *Amoco* Decision, we observed that spot purchasers tend to have considerable discretion in making purchases and were therefore not likely to have made spot market purchases at higher prices were they not able to pass through those higher prices to their own customers. The same rationale is applicable to this proceeding, and we therefore propose to require spot purchaser claimants to submit additional evidence sufficient to rebut the presumption that they had discretion as to where and when to make the crude oil purchases on which their refund claims are based.

2. Refined Products Transactions

Purchasers of UTP products who are likely to be claimants in this proceeding can be categorized either as resellers or end-users. In the first category are wholesalers and retailers of UTP refined petroleum products. In the second category are entities who used UTP refined petroleum products in the production or distribution of goods and services and those who were ultimate consumers of the refined petroleum products.

In order to qualify for a refund, purchasers who are resellers will be required to demonstrate that during the period covered by the consent order they were not able to pass through UTP's alleged overcharges to their customers. While there are a variety of means by which a claimant could make this showing, a reseller generally should demonstrate that at the time it purchased covered products from UTP, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, a reseller of petroleum products must have maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.(5) As in the case of claimants for refunds from the UTP crude oil refund pool, we will establish a rebuttable presumption that spot purchasers of UTP refined products were not injured by UTP's pricing practices. *See Amoco*, 10 DOE at 88,200.

As in prior special refund proceedings, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of refined products made by UTP during the consent order period. We have referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the pro rata amount determined by the volumetric presumption. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon & Gasoline Co. & Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

In the present case, therefore, refunds to applicants who establish an entitlement to a refund will be made on a volumetric basis—i.e., based on the number of gallons of UTP product purchased multiplied by the appropriate per gallon volumetric refund amount. We have calculated the volumetric refund factor by dividing the $1,503,000 comprising the refined products pool by the volume of refined products sold by UTP during the relevant periods of time (4,252,067,146 gallons). The volumetric refund amount computed in this manner and applicable to UTP refined products (exclusive of those covered by the 1981 consent order) is $0.000353 per gallon.

The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the UTP consent order is based on a number of considerations. *See, e.g., Uban, Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use

of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly and to use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products form UTP and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some of the impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. In the Proposed Decision in this case, we tentatively established a threshold of an average purchase volume of 50,000 gallons or less per month or 600,000 gallons or less per year. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. The same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, the total refund to which an applicant would be entitled using a 50,000 gallon per month threshold would be quite small because, as indicated above, the volumetric refund factor is less than $\frac{1}{100}$ of a cent per gallon. We believe, therefore, that the establishment of a presumption of injury for all claims of up to $5,000 in the aggregate is reasonable. *Id.; see also Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of UTP petroleum products need only document their purchase volumes from UTP to make a sufficient showing that they were injured by the alleged overcharges.

In the Proposed Decision, we proposed that cooperatives that operated as petroleum product marketers be excused from the requirement imposed on other resellers that they demonstrate that any overcharges were absorbed and not passed on to their customers. *See Tenneco; Office of Special Counsel*, 9 DOE ¶ 82,545 (1982); *Office of Enforcement*, 9 DOE ¶ 82,551 (1982). This proposal was based on our finding that under the by-laws and contractual agreements that control the financial practices of cooperatives, overcharges allegedly incurred by a cooperative would have been passed through to its customers who, for the most part, are its member-owners, and that, similarly, any refunds would be passed on to the current member-owners of the cooperative. Since we did not receive any adverse comments, we will adopt that proposal in this proceeding, and will excuse cooperatives from the requirement that they make a detailed showing of injury with regard to that portion of their purchases that was resold to their members. However, we will require cooperatives to specify in their applications the percentage of UTP's refined products that was resold to their members and to provide a full explanation of the manner in which refunds will be passed through to their members. (6) With respect to that portion of their purchases from UTP that was resold to non-members, cooperatives will be treated in the same manner as other resellers, and will be required to make a separate showing that they were injured by the alleged overcharges attributable to those volumes.

B. Subpart V Proceeding Involving the 1981 Consent Order (Case No. HEF-0024)

The 1981 consent order settled claims and disputes between the DOE and UTP with respect to the prices charged by UTP in certain specified sales of propane, motor gasoline, and diesel fuel during the period August 19, 1973 through June 1, 1976 (the audit period). The consent order was specifically limited to the settlement of the alleged overcharges attributable to UTP's use of incorrect May 15, 1973 selling prices with respect to the following classes of purchaser:

Product	Class Description	Consent Order Period
Propane	"Petrochemical-Geismar Plant Joint Interest Owners".	8-19-73—5-1-76
Do	"Wholesale-Williams Brothers".	8-19-73—5-1-76
Motor gasoline	"Jobber-San Antonio"	8-19-73—6-1-76
Diesel fuel	"Wholesale-Miller Oil Co. and Raymond Lee".	8-19-73—6-1-76

Source: Consent Order, Exhibit 1.

To the extent that purchasers of UTP products fall within the above categories and periods of time, we will consider claims attributable to such transactions in a refund proceeding separate and distinct from that established in connection with the global consent order.

The same first-stage procedures discussed above in connection with the refined products portion of the global consent order finds will be applied in distributing the refund pool established pursuant to the 1981 consent order. However, applicants for refunds from this refund pool must demonstrate not only that they purchased the UTP products covered by the consent order, but that they also belonged to one of the classes of purchaser specified in the consent order.

For the reasons set forth above in connection with the global consent order refund proceeding, we will adopt the same presumptions discussed there with respect to a volumetric refund amount, small claims, sport purchasers, end-users, and cooperatives. In this proceeding, too, therefore, a successful refund claimant will receive a refund based upon a volumetric method of allocating refunds. We have determined from the ERA audit files that the volume of the designated products which was sold by UTP during the periods of time specified above to the listed classes of purchaser was 205,015,854 gallons. Based on the above information, we have taken as the numerator the $1,325,000 refund pool attributable to the

1981 consent order (to which accrued interest will be added at the time of distribution of any refunds), and the total of 205,015,854 gallons as the denominator, to arrive at a per gallon volumetric refund amount of $0.006463. As in the case of the proceeding involving the global consent order, we initially proposed to establish a purchase threshold level of 50,000 gallons per month in this proceeding. In order to maintain consistency of treatment of small claims in these two UTP refund proceedings, we have determined that the threshold level for applicants in this proceeding should also be changed to $5,000. *See Texas Oil & Gas Corp.*, 12 DOE at 88,210.

IV. Applications for Refund

Those claimants who are eligible for refunds in both the global consent order refund proceeding (Case No. HEF-0009) and the 1981 consent order refund proceeding (Case No. HEF-0224) will be required to file separate applications for each proceeding. While we recognize that this may involve some inconvenience for a small number of customers, it is necessary in order to ensure that refunds are made from the appropriate refund pool. As noted above, our primary reason for establishing a separate refund pool with respect to the 1981 consent order is that combining the two refund pools would greatly reduce the per-gallon refund amount available to those parties who can demonstrate the requisite nexus to those matters covered only by the 1981 order. In order to avoid any possibility of unfairness to those claimants, we will require that separate applications be filed with respect to the two proceedings.

Our experience in prior cases indicates that there may be a number of first-stage claims from individuals and firms who are entitled to refunds of very small amounts. The cost of issuing refund checks precludes the granting of any claim that would result in a refund of less than $15.00. *See Amoco*, 10 DOE at 88,222.

The OHA will accept first-stage Applications for Refund from the UTP consent order funds, pursuant to 10 CFR 205.283, beginning immediately. Applications must be filed no later than 90 days after the publication of this Decision and Order in the Federal Register. An application must be in writing, signed by the applicant, and specify that it pertains to the Matter of Union Texas Petroleum Corporation, Case No. HEF-0009 or Case No. HEF-0224. Any Application for Refund must be filed in duplicate. A copy of the application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Any applicant who believes that his application contains confidential information must so indicate on the first page of the application and submit two additional copies of the application from which the information that the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application shall indicate whether the applicant or any person acting on his instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in these proceedings or the underlying enforcement proceedings. Each application shall also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

In addition, the applicant should furnish the OHA with the name, title, and telephone number of a person who may be contacted for additional information concerning the application. All applications should be sent to: Union Texas Petroleum Corporation Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the consent order funds, the following subjects should be covered in each application:

A. Each applicant should set forth, with respect to each product, its volume of purchases from UTP by calendar quarter for the period of time for which it is claiming it was injured by the alleged overcharges.

B. Each applicant should state, with respect to each product, whether it was a regular customer of UTP or whether it made only spot purchases from UTP.

C. Each applicant should specify how it used each UTP product—i.e., whether it was a refiner, reseller (a category including retailers) or ultimate consumer.

D. If the applicant is a reseller who wishes to claim a total refund in excess of $5,000 under the volumetric methodology, it should also

(i) State, with respect to each product, whether it maintained banks of unrecouped product cost increases from the date of the alleged violation until the product was decontrolled. It should furnish the OHA with quarterly bank calculations.

(ii) State whether it or any of its affiliates has filed any other applications for refunds in which it has referred to its banks to demonstrate injury.

(iii) Submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm with multiple suppliers in addition to UTP may submit market surveys to show that price increases to recover alleged overcharges were not feasible.

E. If the applicant is a reseller that wishes to claim a refund in excess of the per gallon volumetric amount, it must, in addition to providing the information specified in paragraph D, submit evidence which proves that it incurred a disproportionate share of the alleged overcharges.

F. The applicant should report whether it is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. See 10 C.F.R. § 205.9(d).

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Union Texas Petroleum Corporation pursuant to the consent orders executed on November 19, 1980 and July 9, 1982 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: January 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(1) Notice of the proposed consent order was published in the Federal Register on April 1, 1980 (45 F.R. 21340). It was adopted as a final order of the DOE on May 29, 1980 (45 FR 36119). Under the terms of this crude oil consent order, UTP remitted $2.1 million to the DOE to be refunded in accordance with Subpart V. A Petition for Implementation of Special Refund Procedures with resect to this amount was filed with this Office by the ERA on December 23, 1980 (Case No. BEF-0025). This Subpart V petition was subsequently consolidated with others in a special refund proceeding involving consent order funds

concerning alleged crude oil violations. *See Office of Enforcement*, 9 DOE ¶ 82,520 (1982).

(2) The Entitlements Program was part of the comprehensive mandatory pricing and allocation program administered by the DOE. Subsequent to the imposition of petroleum price controls, there developed a price disparity between foreign and uncontrolled (new and stripper) domestic crude oil, and price-controlled (old) domestic crude oil, which had an unequal effect on refiners and their downstream customers because some refiners had greater access to the inexpensive old oil than others. Firms which had little or no access to price-controlled old oil were forced to purchase uncontrolled domestic or similarly expensive foreign crude oil. As a result, many small, independent refiners, with little or no access to price-controlled domestic reserves, experienced crude oil acquisition costs much higher than those of the industry as a whole. To remedy these inbalances, the DOE established the Entitlements Program. 39 FR 31650 (1974); 39 FR 39740 (1974). The Entitlements Program required refiners with proportionately greater access to old oil to make cash payments, in the form of the purchase of entitlements, to refiners with less access to price-controlled oil. The program was designed to restore the competitive viability of the refining industry by generally equalizing among all domestic refiners the benefit associated with access to the lower-priced domestic crude oil.

(3) In the Proposed Decision, we noted that an alternative method of determining the size of the crude oil refund pool would be to compute the percentage of UTP's sales attributable to crude oil on the basis of revenues rather than volumes, and that this would result in a reduction of the crude oil pool to about 14 percent of the total. We have received no comments on this alternative, and have decided to use the proposed volumetric division of the refund pools.

(4) "Posted price" was defined in the price regulations as a written statement of crude oil prices publicly circulated among buyers and sellers of crude oil produced in a particular field in accordance with historic practices and generally known by sellers and buyers in the field. 10 CFR 212.31. The ceiling price for lower tier crude oil was based on the highest posted price as of 6 a.m. local time on May 15, 1973. 10 CFR 212.73. Similarly, the ceiling price for upper tier crude oil was based on the highest posted price on September 30, 1975.

(5) With respect to each product for which a refund is claimed, the reseller must have had an applicable bank equal to or greater than the amount of refund requested on the date the product was decontrolled or, in the case of motor gasoline, the date that the banking regulations were terminated (July 15, 1979 for retailers, and May 1, 1980 for resellers and reseller-retailers, except for 52 firms which opted to continue computing their maximum lawful selling prices under the price rules in effect on April 30, 1980). *See* 10 CFR 212.93 and 45 FR 81255 (December 10, 1980).

(6) Since some refund applicants may be regional cooperatives which sell petroleum products to local co-ops which in turn sell these products to their own individual customers, we shall require regional co-ops who receive refunds in this proceeding to notify their customers that the distribution of any refund is expressly conditioned upon the redistribution of the refund by the local co-ops to their own members. *See Tenneco Oil Co./Farmland Industries*, 9 DOE ¶ 82,597 (1982).

[FR Doc. 85-2588 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Vickers Energy Corp.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of second stage refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has issued a Decision and Order concerning second stage refund procedures to be implemented for distribution of the consent order funds remitted to DOE by Vickers Energy Corporation.

ADDRESS: State plans for distribution of funds should be mailed to: Marcia B. Proctor, Chief, Docket and Publications Branch, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone No. (202) 252-2094.

SUPPLEMENTARY INFORMATION: The Decision and Order which appears below establishes procedures for distribution of the consent order funds remitted to DOE by Vickers Energy Corporation which remain after the conclusion of the first stage of the refund proceeding. During the first stage of the proceeding 309 purchasers of Vickers motor gasoline filed claims and received refunds. However, escrowed funds, amounting to $2,638,217, still remain available for distribution for the benefit of end-users who where injured by Vickers' alleged overcharges.

In this Decision, the Office of Hearings and Appeals (OHA) apportioned the Vickers consent order fund among 16 states, according to the amount of Vickers motor gasoline sold in each state during the period covered by the Vickers consent order. In this manner, refund shares will be proportional to the probable level of injury sustained by end-users within each state. Upon approval by OHA of a plan submitted by a state that will provide restitutionary benefits to motor gasoline consumers within that state, the refund amount apportioned to the state will be disbursed. As discussed in the Decision below, DOE has concluded that state governments are the appropriate bodies to formulate refund plans in this proceeding because they will provide effective and efficient restitution to motor gasoline consumers in the relevant market areas.

Issued in Washington, D.C. on January 16, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Second Stage Refund Procedures

Name of Case: Vickers Energy Corporation.

Date of Filing: January 5, 1984.

Case Number: HQF-0487.

On July 17, 1981, the Department of Energy's Office of Hearings and Appeals (OHA) issued a Decision and Order establishing special refund procedures for distributing a fund which DOE obtained through a consent order with Vickers Energy Corporation (Vickers). *Office of Enforcement*, 8 DOE ¶ 85,597 (1981). Under the terms of the consent order, Vickers placed $2,850,000 into an escrow account settle DOE-alleged violations of the DOE price regulations in sales of motor gasoline during the period August 19, 1973 through March 1979. The July 17 Decision established a two-stage process for distribution of the Vickers consent order fund. The present Decision concerns the second-stage procedures for distributing the money remaining in the Vickers consent order fund.

Background

During the period concerned, Vickers(1) marketed motor gasoline to resellers and end-users located in sixteen states(2) and was subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart E.

A DOE audit of Vickers' records revealed possible violations of the DOE price regulations with respect to sales of motor gasoline from other than company-operated retail outlets during the period August 19, 1973 through March 1979. In order to settle the dispute between Vickers and DOE regarding those sales, Vickers and DOE entered into a consent order on May 11, 1979. (3) In accordance with the terms of the consent order, Vickers paid $2,850,000 into an interest-bearing escrow account to be held pending its distribution by the Office of Hearings and Appeals under the DOE Special Refund Procedures.

Subpart V of 10 CFR Part 205. *See* 44 FR 29703 (May 22, 1979).(*4*)

The primary purpose of the Subpart V special refund procedures is to provide restitution to persons injured by alleged regulatory violations. *See generally Office of Enforcement*, 8DOE ¶ 82,597 (1981). The Subpart V refund process offers a means of compensation persons who have suffered injuries which would otherwise go unredressed because they lack resources or do not have a sufficient financial stake in the outcome to institute private lawsuits under Section 210 of the Economic Stabilization Act. To accomplish this objective we have generally used a two-stage refund process. In the first stage, payment is made to claimants who file applications for refund and demonstrate that they were injured by the alleged overcharges. Any funds remaining after valid claims are paid are distributed through second-stage procedures, consistent with the restitutionary purpose of the Subpart V regulations and the underlying statutes.

In this proceeding, the deadline for submitting refund applications was October 24, 1981. 46 FR 38132 (July 24, 1981). Notice of the proceeding was published in the **Federal Register** and the trade press. *Id.* Three hundred seventy-three purchasers of Vickers motor gasoline filed claims. These claims have all been procesed and written determinations issued approving or denying each claim. We distributed a total of more than $1.5 million to 309 of those claimants in the first stage. *See, e.g., Vickers Energy Corporation/ Marcum Distributing Co. and Marcum Oil Co.*, 11 DOE ¶ 85,198 (1983). As of December 31, 1984, $2,638,217 of the Vickers consent order fund (including interest) remains available for distribution through second-stage refund procedures.(*5*)

Comments on Second-Stage Refund Procedures

During the Vickers refund proceeding we solicited comments from interested parties concerning the second-stage refund procedures that should be adopted. We received comments from the Attorneys General of the States of Delaware, Iowa, Louisiana, North Dakota, Oregon, and Rhode Island, as well as from the Energy Offices of the States of Connecticut, Maine, Vermont, and New York. These commenters favor the distribution of second-stage refund money through plans formulated by state governments to benefit injured consumers within the state concerned.

Second-Stage Refunds

As we have stated above, providing restitution to injured persons is the primary goal of Subpart V proceedings. In many cases achieving mathematically exact compensation for those who were adversely affected by alleged overcharges on petroleum products is impossible. This results in part from the difficulties inherent in tracing the precise impact of alleged overcharges which occurred well in the past. In addition, many eligible persons do not file claims, either because the amount of the refund which they would receive is too small, or they lack the motivation or resources to obtain documentation for their claims. As a result, an additional procedure after the identification and payment of claims in the first stage may be required to further the goal of restitution. The objective of the second stage is most nearly to restore the status quo ante by attempting to return the remaining funds obtained by DOE to those who were injured by the alleged overcharges. *See In re The Department of Energy Stripper Well Exemption Litigation*, Fed. Energy Guidelines ¶ 26,445 at 29,311 (D. Kan. 1983):

> Restitution seeks to restore the status quo but, if that is not possible because the status quo has been permanently altered, restitution seeks to provide other kinds of compensation. See *Restatement of Restitution*, § 1, comment a (1937).

Id. at 29,309.

The fact that this process is difficult does not mean it should not be attempted, in view of the relevant statutory objectives "to set things right and order restitution [in instances of overcharging]." *See* S. Rep. No. 92–507, 92d Cong., 1st Sess. reprinted in 1971 U.S. Code Cong. & Admin. News 2283, 2291, Economic Stabilization Act of 1970, 209, 12 U.S.C. 1904 note (1971), adopted by 15 U.S.C. 754(a). In *Sauder* v. *DOE*, 648 F.2d 1341 (Temp. Emer, Ct. App. 1981), the Temporary Emergency Court of Appeals recognized the need for flexibility in fashioning remedies when it stated that DOE's authority to compensate parties injured by regulatory violations was not restricted to "a particularly strict interpretation of restitution." *Id.* at 1348. *See also* DOE Ruling 1984–1 (Restitutionary Authority Available to the Department Under the Statutes and Regulations It Administers), 49 FR 22063 (May 25, 1984). The remaining funds in this proceeding should therefore be distributed in a way, assuming it is practical and feasible, that will benefit the same classes of resellers and consumers whom we have already identified as having been injured by Vickers' alleged overcharges. *See, e.g., Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *Colson* v. *Hilton Hotels*, 59 F.R.D. 324 (N.D. Ill. 1982); *FPC* v. *Interstate Gas Co.*, 336 U.S. 577 (1949).

In previous special refund determinations we have used a number of different means of achieving restitution in second-stage proceedings, choosing the one in each case which would most clearly serve the equitable and restitutionary goals of the Subpart V process.

For example, where the information in the record indicated that part or all of the impact of the alleged overcharges was borne by specific end-users, it was possible to direct the refunds to the actual end-users concerned. In *Office of Enforcement (PVM)*, 10 DOE ¶ 85,072 (1983), the investigatory files identified the General Electric Lamp Division in Cleveland, Ohio, and the Missouri Pacific Railroad as end-users of the fuel oil covered by the consent decree involved in that case. However, this information was not obtained by OHA until after the first stage of the refund proceeding had been completed. Because they could not have known that the product they purchased originated with PVM, the two firms did not know they were eligible to file first-stage refund claims. When they were later identified as purchasers of the PVM product, they were granted second-stage refunds. Missouri Pacific, as a regulated transportation company, was required to pass on the refund to its customers as a condition of receipt. Simiarly, the Metropolitan Transit Authority of Harris County, Texas, as the successor to the largest purchaser of middle distillates sold by Ada Resources, received a second-stage refund in *Office of Enforcement (Ada)*, 11 DOE ¶ 85,161 (1983).

Where specific end-users could not be identified but the product and geographic area where it was sold were known, we found it was possible to channel the second stage refunds to the injured classes. In *Ada*, Bunker "C" fuel sold by the consenting firm was known to have been purchased in the Houston-Galveston (Texas) area for use as ship fuel. As a result, the Port of Houston Authority and the Galveston Wharves Board were allotted second-stage refunds because they could best use the refunds in ways to benefit the class of injured end-users who purchased Bunker "C" fuel from Ada. Like wise, in *Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 (1983), the City of San Antonio received a second stage refund because a large share of Armstrong's diesel fuel sales during the

consent order period had been make within that city. The refund was made to the city on the basis of the finding that it would be able to pass on the benefits of the refund to the class of injured consumers involved by increasing city services or reducing taxes.

Similarly, where the classes of persons who were adversely affected by the alleged overcharges were located in a specific metropolitan area, refunds have been made to the state in which the metropolitan area, refunds have been made to the state in which the metropolitan area was located for use in that area. *See Office of Enforcement (Nordstrom)*, 11 DOE ¶ 85,174 (1983) (Cedar Rapids, Iowa metropolitan area); *PVM*, 10 DOE ¶ 85,072 (1983) (New York City metropolitan area); *Ada*, 11 DOE ¶ 85,161 (1983) (Houston metropolitan area).

Second-stage refunds were also approved for a state where a significant portion of the alleged overcharges was borne by a large cross-section of residents and businesses located within the state. *See Armstrong*, 10 DOE ¶ 85,050 (1983) (Texas); *Anderson Butane Service, Inc.*, 11 DOE ¶ 85,186 (1983) (Louisiana).

Second-stage refunds have also been approved in cases where overcharges occurred within large regions encompassing more than one state. Where customers injured by alleged overcharges were located in more than one state, refunds were apportioned among the states based on the percentage of sales of covered product(s) within each state. *See Northeast Petroleum Industries*, 11 DOE ¶ 85,199 (1983) (four New England States); *Palo Pinto Oil & Gas*, 11 DOE ¶ 85,034 (1983) (50 states, the District of Columbia, territories and possessions); *Standard Oil Company (Indiana)*, 11 DOE ¶ 85,185 (1983) (48 continental states, the District of Columbia, and federally recognized Indian tribal reservations).

State governments are particularly well-suited to channelling the benefits of consent order funds to the persons who most likely were injured by the consenting firm's regulatory practices. *See, e.g., Office of Enforcement (PVM)*, 10 DOE ¶ 85,072 (1983); *Office of Enforcement (Nordstorm)*, 11 DOE ¶ 85,174 (1983). State governments are familiar with the energy needs of their citizens, and therefore can select the specific energy-related projects and programs which should be funded with the money. State governments also are familiar with the existing and potential mechanisms for distributing these funds through energy-related public programs quickly and in a cost-effective manner.

Where channelling refunds to specified customers, to a locality, state or a multi-state area is impractical or impossible, *e.g.*, in certain cases where overcharges had a nationwide impact, a direct refund to the United States Treasury has been utilized. *See Getty Oil Co.*, 1 DOE ¶ 80,102 (1977) (directing $85 million refund to U.S. Treasury for crude oil price violations), *aff'd sub nom. Getty Oil Co. v. DOE*, 569 F. Supp. 1204 (D. Del. 1983), *aff'd*, 749 F.2d 734 (Temp. Emer. Ct. App. 1984), *petition for cert. filed*, 53 U.S.L.W. 3405 (U.S. Nov. 27, 1984) (No. 84–730). This avenue involves virtually no administrative expenses, and produces benefits for all citizens. *See* Ruling 1984–1. Finally, DOE has recommened that Congress enact a bill entitled the Petroleum Overcharge Restitution Act, S. 2370, 98th Cong., 2d Sess. (1984) which would make oil overcharge funds available to the states for use in three federal energy conservation programs. We must now consider which of the above approaches is most appropriate in this processing.

In the present case, we know that the injured consumers of Vickers motor gasoline are located in a large but specific region of the nation. Vickers sold motor gasoline during the period covered by the consent order in 16 states: Arkansas, Arizona, Colorado, Iowa, Illinois, Kansas, Mississippi, Minnesota, Missouri, North Dakota, Nebraska, Oklahoma, South Dakota, Texas, Utah, and Wisconsin. As a result, the impact of the overcharges was not nationwide. In fact, over 80% of the Vickers motor gasoline sold during the consent order period was distributed in only four states: Kansas, Missouri, Oklahoma and Texas. We find that distribution of the remaining Vickers consent order funds to injured persons located in those states where the sales covered by the Vickers Consent Order took place is most consistent with the restitutionary goals of Subpart V and the underlying statutes since the effects of the alleged overcharges would most likely have been incurred by motor gasoline purchasers in those states.

We will therefore apportion the remaining consent order funds according to the volume of Vickers' motor gasoline sales in each state. *See, e.g., Palo Pinto Oil and Gas*, 11 DOE ¶ 85,034 (1983). State-by-state sales information was provided to us by the Vickers Division of Total Petroleum, Inc. On the basis of that information, we can equitably apportion the remaining Vickers consent order funds according to the ratio of the volume of Vickers motor gasoline sold in each state to the total amount of Vickers motor gasoline sold nationally during the period covered by the consent order. The Appendix to this Decision and Order shows the results of those calculations. Accordingly, we will allot the refunds set forth in the Appendix to each of the states listed therein.[6]

Funds will be disbursed upon the approval of a plan for spending this money submitted by each state. These plans should meet the general restitutionary objective of benefiting the class of persons who were injured by the alleged violations—consumers of motor gasoline. The plans will be scrutinized to insure that administrative costs will be minimized. The refunds may be used for new energy-related projects, but they must not be used as a substitute for state funds to implement projects or programs which would be funded regardless of this distribution. In other words, the money distributed to the states should be used to supplement, not supplant, any state or federal funds which are already budgeted for those purposes. Each program must be implemented within a reasonable period following receipt of the funds. Upon implementation of the plan, each state should certify that the funds were spent in accordance with the approved plan.

Following the broad guidelines discussed above, the plan that each state submits should include the following information: (1) A description of the programs to be funded; (2) the time frame for implementation of the programs; (3) a statement explaining whether each program is an enlargement of an existing program or a new project; (4) an explanation of the manner in which consumers of motor gasoline will benefit from the programs; (5) a statement certifying that the submitting agency or office has authority under state law to submit the plan; and (6) a statement committing the agency or office responsible for administering the plan to filing with the OHA a post-plan report, which will include a certification that the funds were spent in accordance with the DOE-approved plan. *See, e.g., Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *Office of Enforcement*, 11 DOE ¶ 85,161 (1983).

It Is Therefore Ordered That:

(1) The governments of the states listed in the Appendix to this Decision and Order shall be permitted to submitted plans in accordance with the standards set forth in this Decision for the use of each state's proportionate share of the escrow account established by the consent order entered into by the Department of Energy and the Vickers Energy Corporation.

(2) This is a final order of the Department of Energy.

Dated: January 16, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(1) Prior to October 2, 1980, Vickers Petroleum Corporation was a small and independent refiner that was a wholly-owned subsidiary of Vickers Energy Corporation, which, in turn, was a subsidiary of Esmark, Inc. On that date, Vickers Petroleum Corporation was acquired by Total Petroleum, Inc. and is now a division of Total.

(2) The sixteen states were Arizona, Arkansas, Colorado, Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wisconsin.

(3) A different settlement was reached for alleged overcharges made at Vickers' company-operated retail service stations, and that settlement is not involved in this proceeding.

(4) The consent order was adopted in final form on August 13, 1979. See 44 FR 48751 (August 20, 1979).

(5) That figure includes interest accrued through December 31, 1984.

(6) From the information currently contained in the record we are unable to apportion 454,880 gallons of Vickers motor gasoline to any particular state. This gallonage amounts to only 0.0285 percent of the total volume involved in this case, to which a refund of $716 should be allotted. Because of the small sum involved, the cost of any further tracing process to identify which state or states should receive this money would be disproportionately large in comparison with the amount involved. We find that payment of the $716, pro rata, to the 16 states where the sales covered by the Vickers Consent Order took place is appropriate since the overcharges occurred in those areas in any case and alternative schemes would not be practical in light of the small sum involved. *See Office of Enforcement*, 10 DOE ¶ 85,016 (1982); *Office of Enforcement*, 9 DOE ¶ 82,594, at 85,501 (1982). Therefore, we will direct that $716 from the Vickers escrow account be apportioned pro rate among the 16 States receiving refunds from the Vickers consent order fund.

APPENDIX.—VICKERS PRODUCT SALES BY STATE: AUGUST 1973–MARCH 1979

State	Volume [1]	Percentage	Refund [2]
Arizona	4,530,614	0.2844	$7,502
Arkansas	712,462	0.0447	1,180
Colorado	73,943,692	4.6409	122,438
Illinois	1,784,028	0.1120	2,954
Iowa	67,262,277	4.2216	111,374
Kansas	471,066,817	29.5657	780,006
Minnesota	42,560,545	2.6712	70,473
Mississippi	43,380,909	2.7227	71,831
Missouri	154,156,258	9.6753	255,255
Nebraska	66,996,687	4.2049	110,935
North Dakota	72,538	0.0046	120
Oklahoma	444,374,821	27.8903	735,806
South Dakota	760,536	0.0477	1,259
Texas	214,660,518	13.4727	355,440
Utah	6,922,356	0.4345	11,462
Wisconsin	110,153	0.0069	182
Total	1,593,297,211	100.0000	2,638,217

[1] Volume amount includes 454,750 gallons not attributable to a particular state. That amount has been apportioned to each state or a pro rata basis.

[2] Interest accrued through December 31, 1984, has been included in this table.

[FR Doc. 85-2587 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Waller Petroleum Co., Inc.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from Waller Petroleum Company, Inc. in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by May 2, 1985, should conspicuously display a reference to case number HEF-0191, and should be addressed to: Office of Hearings and Appeals Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of consent order between Waller Petroleum Company, Inc. and DOE. The consent order settled all disputes between DOE and Waller concerning possible violations of DOE price regulations with respect to the firm's sales of No. 2 heating oil and Nos. 4, 5, and 6 fuel oil during the period November 1, 1973, through May 31, 1974.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by May 2, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds in excess of $100 must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: January 8, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Waller Petroleum Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0191.

This proceeding involves a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations, ERA may request that OHA formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the Department of Energy (DOE) regulations. ERA filed the petition in this case in connection with a consent order that it entered into with Waller Petroleum Company, Inc. (Waller).

Waller is a "reseller-retailer" of middle distillates and residual fuel oils as defined in 10 CFR 212.31, and is located in Towson, Maryland. An ERA audit of the firm's records revealed possible pricing violations in the firm's sales of No. 2 heating oil and Nos. 4, 5, and 6 fuel oil during the period from November 1, 1973, through May 31, 1974 (the audit period).

In order to settle all claims and disputes between Waller and ERA regarding the firm's sales of middle distillates and residual fuel oils during the audit period, the firm and ERA entered into a consent order on August 21, 1979, in which Waller agreed to pay $508,087 directly to 50 identified customers plus $91,913 (including interest to that time) to DOE in settlement of the firm's potential liability with respect to sales to Waller's other customers during the audit period. The payment to the DOE was deposited in an interest bearing escrow account for ultimate distribution to the parties bearing the burden of the alleged overcharges. As of November 30, 1984, the Waller escrow account had earned $57,998.81 in interest. This Decision concerns the distribution of the $91,913 that was deposited into the escrow account, plus accrued interest.

During the audit of the firm, ERA identified 61 customers who may have

been overcharged. On September 7, 1979, 50 of these customers were paid amounts specifically set forth in the Consent Order from the $508,087 fund. The eleven other Waller customers were fuel oil resellers; they are listed in the Appendix to this Decision and Order. These eleven resellers and their downstream consumers have not yet received restitution for any injuries that they may have incurred as a result of Waller's alleged overcharges.

On March 19, 1984, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute the money in the Waller escrow account to the eleven customers in Waller's reseller class of purchaser. 49 FR 12743 (March 30, 1984). We proposed that, since the record indicates that the eleven firms are the parties most likely to have been injured by Waller's pricing practices, the money in the Waller escrow account should be distributed to them. We recognized, however, that other customers not identified by the ERA audit may also be entitled to a portion of the consent order fund, and we stated that, if additional meritorious claims are filed, the appropriate amount of refund to each firm would be determined after analyzing those claims.

This decision establishes procedures for filing claims in the Waller refund proceeding. We will describe the information that a purchaser of Waller fuel oil should submit in order to demonstrate that it is eligible to receive a portion of the consent order funds. In establishing these requirements, we will address issues raised by our March 19 proposal.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and have determined that it is appropriate to establish such a proceeding with respect to the Waller consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the Waller consent order funds.

II. First-Stage Refund Procedures

A. Refunds to Injured Purchasers

We have concluded that applications for refund should now be accepted from the eleven firms listed in the Appendix and from other firms in Waller's reseller class of purchaser. Additionally, applications for refund will also be accepted from all Waller fuel oil customers who have not received restitution for any alleged overcharges by Waller, including downstream consumers who purchased Waller fuel from any of the eleven identified resellers. We find that this distribution of funds would be the most equitable method of accomplishing restitution under the circumstances of this case.

In order to receive a refund, each claimant will be required to submit a schedule of monthly purchasers of Waller Nos. 2, 4, 5, or 6 fuel oil for the period November 1, 1973, through May 31, 1974. If the fuel oil was not purchased directly from Waller, the claimant must include a statement setting forth his reasons for believing the fuel oil originated with Waller. In addition, a reseller or retailer of Waller fuel oil that files a claim generally will be required to establish that it was injured by the alleged overcharges. To make this showing, a reseller or retailer claimant will first be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement: In the Matter of Ada Resources, Inc.*, 10 DOE ¶ 85,029 at 88,125 (1982).

In addition, a reseller will have to provide some further evidence of injury, such as demonstrating that, at the time it purchased the fuel oil from Waller, it was unable to increase its prices to pass through the additional costs associated with the alleged overcharges. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,215 (1982) (hereinafter cited as *Amoco*). A reseller can make this showing by demonstrating that the prices it paid to other suppliers for fuel oil were lower than those it paid to Waller. *See, e.g., Tenneco Oil Co./Racetrace Petroleum, Inc.*, 10 DOE ¶ 85,023 (1982).

As in many prior special refund cases, we will adopt certain presumptions in order to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable OHA to consider refund applications in the most efficient way possible. *See* 10 CFR 205.282(e).

Section 205.282(e) specifically authorizes the use of presumptions in refund cases:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

Both of the presumptions that we are adopting are desirable from an administrative standpoint because they allow OHA to process a large number of refund claims quickly and efficiently.

We will first adopt a presumption that the alleged overcharges were spread equally over all gallons of Waller fuel oil marketed during the consent order period. This assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, because the impact on individual purchasers could vary, each purchaser is allowed to file an application based on a claim that the alleged overcharges had an actual impact greater than that presumed. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

We will also adopt a presumption that reseller or retailer claimants seeking refunds of $5,000 or less were injured by Waller's alleged overcharges. As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the type of data needed to support a detailed claim of injury . *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). In the case of small claims, a firm's cost of gathering detailed factual information regarding the impact of alleged overcharges which took place many years ago, and OHA's cost of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. We believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable in this case because the time period covered by the Waller consent order is quite distant. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,225 (1984) and cases cited therein. (*1*) Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury if its refund claim is below the $5,000 threshold level.(*2*).

In addition to the presumptions we are adopting, we are making a finding that each end-user or ultimate consumer whose business is unrelated to the

petroleum industry was injured by the alleged overcharges covered by the consent order. Unlike regulated firms in the petroleum industry, members of this group were not required to keep records which justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users need only document the volume of Waller Nos. 2, 4, 5, or 6 fuel oil that they purchased in order to prove that they were injured by the alleged overcharges.

If a reseller or retailer made only spot purchases of Waller fuel oil, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchasers of [the firm's product] at increased market prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, Economic Regulatory Administration: In the Matter of Vickers Energy Corporation, 8 DOE ¶ 82,597 at 85,396–97 (1981). We believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit sufficient evidence to establish that it was unable to recover the increased prices it paid for Waller fuel oil. *See Amoco* at 88,200.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a per-gallon refund amount is calculated by dividing the settlement amount by the total gallons of fuel oil covered by the consent order. The refund amount in this case will be $.0857177 per gallon ($91,913 received from Waller divided by 1,072,275 gallons of fuel oil sold by Waller to its reseller class of purchaser during the audit period), exclusive of interest. Refunds will be calculated by multiplying eligible purchase volumes by the per-gallon refund amount. Successful claimants will also receive a proportionate share of the interest accrued on the consent order fund since it was remitted to DOE. Although we are adopting volumetric method of allocating refunds, any claimant that believes if was injured by an amount greater than the volumetric figure may submit evidence to support its claim to a larger refund.

As in previous cases, we will establish a minimun refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co., 9* DOE ¶ 82,541 at 85,225 (1982); *see also* 10 CFR 205.286(b).

B. Application for Refund

An application must be in writing, signed by the applicant, and specify that it pertains to the Waller Consent Order Fund, Case Number HEF–0191. An applicant should indicate whether it purchased No. 2, 4, 5, or 6 fuel oil, and from whom the fuel oil was purchased. If the applicant is not a direct purchaser from Waller, it should also indicate the basis for its belief that the fuel oil which it purchased originated from Waller. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges. Each applicant should specify how it used the Waller fuel oil, indicating whether it was a reseller or ultimate user. If the applicant is a reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1, 1973, through January 27, 1981. If the applicant is a reseller, it must also submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm may submit market surveys or information about changes in its profit margins of sales volume to show that price increases to recover alleged overcharges were infeasible. An applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep OHA informed of any change in status during while its application for refund is being considered. *See* 10 CFR 205.9(d). In addition an applicant should state whether the applicant has received compensation any alleged Waller overcharges (such as through a price roll back or refund from Waller, or through a private legal action). Each application must also include the following statement: "I swear (or affirm) that the information submitted true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, each applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

Each application for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and must submit two additional copies of its application from which the confidential information has been deleted together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Waller Consent Order Refund Proceeding, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Applications for refund of a portion of the Waller consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.** *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It It Therefore Ordered That:

(1) The Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration in Case No. HEF–0191 be granted.

(2) Applications for Refunds from the funds remitted to the Department of Energy by Waller Petroleum Company, Inc. pursuant to the consent order executed on August 21, 1979, may now be filed.

(3) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: January 8, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Notes

(1) *In Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We

believe that the same approach should be followed in this case.

(2) In this case, the presumption of injury for small claims not exceeding the $5,000 threshold figure is equivalent to purchases of approximately 8,333 gallons per month during the Waller consent order period. Applicants whose refund claims exceed the sum of $5,000 but cannot furnish additional evidence showing that they were injured by a greater amount, or who choose to limit their claims to the threshold amount, will be eligible for a refund up to the $5,000 threshold amount without being required to submit any additional evidence of injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981); *see also* Office of Enforcement, Economic Regulatory Administration: In the Matter of Ada Resources, Inc., 10 DOE ¶ 85,029 at 88,122 (1982).

Appendix

Customer

Annapolis Utilities, P.O. Box 1871, Annapolis, MD 22404
Bulk Sales, 1015 Ingleside Ave. Baltimore, MD 21228
Eastern Petroleum, 708 Baltimore Annapolis Blvd. NE., Glen Burnie, MD 21061
E. Stewart Mitchell, 1400 Ceddox St., Baltimore, MD 21225
Southern Maryland Oil, Route 301 South, LaPlata, MD 20646
Space Petroleum, Suburban Building, Suite 701, 5602 Baltimore National Pike, Baltimore, MD 21228
Stape Best Co., 3465 North 6th St., Harrisburg, PA 17105
Tower Sales, 936 East Grant Ave., Tower City, PA 17980
Tri Gas & Oil Co., P.O. Box 465, Federalsburg, MD 21632
Way Oil Co., 1062 Old Manheim Pike, P.O. Box 4768, Lancaster, PA 17604
Wooten Oil & Fuel, P.O. Box 1277, Goldsboro, NC 27530

[FR Doc. 85-2586 Filed 1-31-85; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Webco Southern Oil, Inc.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $14,561.57 plus accrued interest in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Webco Southern Oil, Incorporated, a reseller of refined petroleum products located in Smyrna, Georgia.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0194.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by the Webco Southern Oil, Incorporated which settled possible violations of DOE price controls in the firm's sales of motor gasoline to its customers during the March 1, 1979 through July 31, 1979 period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Webco Southern Oil, Incorporated, pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Webco Southern Oil, Incorporated products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: January 17, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Webco Southern Oil, Incorporated.

Date of Filing: October 13, 1983.

Case Number: HEF-0194.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the DOE Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as part of a settlement agreement or pursuant to a Remedial Order. Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Webco Southern Oil, Incorporated (Webco).

I. Background

Webco is a "reseller/retailer" of motor gasoline as that term was defined in 10 CFR 212.31, and is located in Smyrna, Georgia. The firm was subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212, Subpart F until January 28, 1981, when motor gasoline and other refined petroleum products were exempted from price and allocation controls. An audit of Webco's sales of motor gasoline from March 1, 1979 through July 31, 1979 (the audit period) revealed possible regulatory violations. In order to settle all claims and disputes between Webco and the DOE regarding the firm's sales of motor gasoline during the audit period, Webco and the DOE entered into a consent order on April 7, 1981, in which Webco agreed to remit $13,079.52 to the DOE.(*1*) The sum of $14,556.57 (*2*) was deposited into an interest-bearing escrow account for ultimate distribution to the parties who may have been injured by the alleged overcharges. This Proposed Decision concerns the distribution of the $14,561.57 that was deposited into the escrow account, plus accrued interest, which amounted to $4,445.22 as of December 31, 1984.

II. Proposed Refund Procedures

We have considered the ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Webco consent order fund. The Subpart V process may be used in situations where DOE is unable to readily identify persons who were injured or to ascertain the amounts that such persons are eligible to receive as a result of enforcement proceedings. 10 CFR 205.280; *see also In re The Charter Co.*, 47 FR 16396 (April 16, 1982) (proposed decision); *Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982). The ERA indicated in its petition that those circumstances exist in this case; therefore, we propose to grant ERA's petition and assume jurisdiction over the distribution of the Webco consent order fund.

A. Refunds to Identifiable Purchasers

We propose that the Webco consent order funds be distributed to claimants who satisfactorily demonstrate that they were injured by Webco's alleged violations. During the audit of the firm, ERA identified eight customers who may have been overcharged. The names and addresses of these customers are listed in the Appendix to this Decision and Order. Our experience with Subpart V proceedings indicates that the likely claimants in this proceeding, when more fully identified, will fall into two categories: (1) Resellers (including retailers) of motor gasoline and (2) firms, individuals, or organizations that were consumers (end-users) of motor gasoline. The motor gasoline purchased by these claimants was purchased either directly from Webco or from other firms in a chain of distribution leading back to Webco.

In order to receive a refund, each claimant will be required to submit a schedule of monthly purchases of motor gasoline for the period March 1, 1979 through July 31, 1979. If the motor gasoline was not purchased directly from Webco, the claimant will be required to include a statement setting forth his or her reasons for believing the product originated with Webco. In addition, a reseller or retailer of Webco motor gasoline that files a claim generally will be required to establish that it was injured by the alleged overcharges. To make this showing, a reseller or retailer claimant will first be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices.(*3*) *See Office of Enforcement: In the Matter of Ada Resources, Inc.*, 10 DOE ¶ 85,029 at 88,125 (1982). In addition, a reseller will have to provide some further evidence of injury. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,215 (1982) (hereinafter cited as *Amoco*).

As in many prior special refund cases, we will adopt certain presumptions in order to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable OHA to consider refund applications in the most efficient way possible. *See* 10 CFR 205.282(e). Section 205.282(e) specifically authorizes the use of presumptions in refund cases:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

Both of the presumptions that we are adopting are desirable from an administrative standpoint because they allow OHA to provess a large number of refund claims quickly and efficiently.

We will first adopt a presumption that the alleged overcharges were spread equally over all gallons of Webco motor gasoline marketed during the consent order period. This assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, because the impact on individual purchasers could vary, each purchaser will be allowed to file an application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

We will also adopt a presumption that reseller or retailer claimants seeking refunds of $5,000 or less were injured by Webco's alleged overcharges. As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). In the case of small claims, a firm's cost of gathering detailed factual information regarding the impact of alleged overcharges which took place many years ago, and OHA's cost of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. We believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable in this case because the time period covered by the Webco consent order is quite distant. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶85,226 (1984) and cases cited therein. (*4*) Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury if its refund claim is below the $5,000 threshold level. (*5*)

In addition to the presumptions we are adopting, we are making a finding that each end-user or ultimate consumer whose business is unrelated to the petroleum industry was injured by the alleged overcharges covered by the consent order. Unlike regulated firms in the petroleum industry, members of this group were not required to keep records which justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users need only document the volume of Webco motor gasoline that they purchased in order to prove that they were injured by the alleged overcharges.

If a reseller or retailer made only spot purchases of Webco motor gasoline, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased market prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, Economic Regulatory Administration: In the Matter of Vickers Energy Corporation, 8 DOE ¶ 82,597 at 85,396–97 (1981). We believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit sufficient evidence to establish that it was unable to recover the increased prices it paid for Webco motor gasoline. *See Amoco* at 88,200.

A successful refund applicant will receive a refund based upon a

volumetric method of allocating refunds. Under this method, a per-gallon refund amount is calculated by dividing the settlement amount by the total gallons of motor gasoline covered by the consent order. The refund amount in this case will be $.005162 per gallon ($14,561.57 received from Webco divided by 2,820,799 gallons of motor gasoline sold by Webco to its customers during the audit period), exclusive of interest. Refunds will be calculated by multiplying eligible purchase volumes by the per-gallon refund amount. Successful claimants will also receive a proportionate share of the interest accrued on the consent order fund since it was remitted to DOE. As of December 31, 1984, accrued interest will increase the per gallon refund amount by $.001575 for a total per gallon amount of $.006737. Although we are adopting a volumetric method for allocating refunds, any claimant that believes it suffered a disproportionate share of the alleged overcharges may submit evidence to support its claim to a larger refund.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982); *see also* 10 CFR 205.286(b).

Detailed procedures for filing applications will be provided in a final Decision and Order. Applications for refunds should not be filed until issuance of the final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the Federal Register, notice will be provided to the Southeastern Independent Oil Marketers Association which may be helpful in advising potential claimants of this proceeding. In addition, we are continuing our efforts to obtain a more complete list of the names and addresses of firms and individuals who purchased Webco motor gasoline.

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We will therefore reserve this issue for determination at a later date.

It Is Therefore Odered That:

The $14,561.57 refund amount remitted by Webco Southern Oil, Incorporated, pursuant to the consent order executed on April 7, 1981 will be distributed in accordance with the foregoing Decision.

Notes

(1) Webco agreed in the Consent Order entered with the Department of Energy on April 7, 1981, to make direct refunds totalling $642.39 within seven days of the effective date of the Consent Order to the following parties:

Customer name	Amount
Pierce Roofing Co	$20.38
City of Hapeville	341.05
C.C Hunt & Co	13.11
Merritt Equipment Service	34.24
Dr. B.R. Thornton	11.56
Lakeside Country Club	77.69
Sherwood Memorial Park	15.22
Pierce Havanil Construction	71.05
Beale Roofing Co	14.33
Cecil Travis	3.47
City of College Park	5.20
Sorrows Auto Salvage	13.62
William C. Meredith Co	9.12
Pierce Haynie	12.46
Total	$642.39

(2) Because Webco elected to remit three installment payments in satisfaction of the $13,079.52 owed to the DOE pursuant to the consent order, the interest that accumulated on those installments increased the amount of principal deposited into that deposit escrow account to $14,561.57.

(3) The price rules applicable to sale of motor gasoline by retailers were amended effective July 14, 1979. 44 FR 42542 (July 19, 1979). The amended regulation, 10 CFR 212.93(a)(2), provided for a fixed per-gallon markup of 15.4 cents (later increased) for retail sales of motor gasoline, and eliminated the "banking" provisions formerly in effect. Since the fixed markup was in effect during a portion of the latter month of the period covered by the Webco consent order, no showing of cost banks will be required of retailers from July 14, 1979 through July 31, 1979. The use of banking remained optional for larger resellers of motor gasoline; firms that elected to continue cost banking will be required to submit this information throughout the audit period if they apply for refunds greater than $5,000.

(4) In *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case.

(5) In this case, the presumption of injury for small claims not exceeding the $5,000 threshold figure is equivalent to purchases of approximately 242,154 gallons per month during the Webco consent order period. Applicants whose refund claims exceed the sum of $5,000 but cannot furnish additional evidence showing that they were injured by a greater amount, or who choose to limit their claims to the threshold amount, will be eligible for a refund up to the $5,000 threshold amount without being required to submit any additional evidence of injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981); *see also* Office of Enforcement, Economic Regulatory Administration: In the Matter of Ada Resources, Inc., 10 DOE ¶ 85,029 at 88,122 (1982).

Appendix A

Indentified First Pruchasers

R.W. Harris, 85 Hwy., Route 3, Fayetteville, GA 30214
John E. McKinney, 1278 Central Avenue, East Point, GA 30344
Frank T. Hewatt, 5192 Hwy. 42, Ellenwood, GA 30049
Richard M. Huber, 5110 Old National Highway, College Park, GA 30349
Lance Oil Co., Inc., 3475 A Lake Drive, Smyrna, GA 30080
Wallace Tire & Alignment, 1567 Wellingham Drive, East Point, GA 30344
Lloyd Saggus, 1227 Virginia Avenue, East Point, GA 30344
National Car Rental, 3425 Whipple Avenue, East Point, GA 30344

[FR Doc. 85-2585 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; White Petroleum Co., Inc.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from White Petroleum Company, Inc. in settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by May 2, 1985, should conspicuously display a reference to case number HEF-0196, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of consent order between White Petroleum Company (White) and DOE. The consent order settled all disputes between DOE and White concerning possible violations of DOE price regulations with respect to the firm's sales of motor gasoline, No. 2 fuel oil and No. 2 diesel fuel during the period November 1, 1973 through April 30, 1974.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by May 2, 1985, and should be sent to the address set forth at the beginning of this notice. Application for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 100 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: January 14, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: White Petroleum Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0196.

This decision involves a Petition for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations of the Department of Energy (DOE), ERA may request that the OHA formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. In this case ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order that it entered into with White Petroleum Company (White), a firm located in Shirley, Indiana.

White, a reseller of motor gasoline, No. 2 fuel oil and No. 2 diesel fuel, sold petroleum products to resellers and end-users during the period of federal price controls, and was therefore subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart F. A DOE audit of White's records revealed possible regulatory violations with respect to the firm's pricing of refined petroleum products during the period November 1, 1973 through April 30, 1974 (hereinafter referred to as the Consent Order period). In order to settle all claims and disputes between White and DOE regarding the firm's sales of motor gasoline, No. 2 fuel oil and No. 2 diesel fuel, White and DOE entered into a consent order on August 31, 1979. Under the terms of the consent order White agreed to remit $68,627.45 plus accrued interest to the DOE in 36 equal monthly installments. To date White has paid $42,325.95. White has filed for bankruptcy, and no further payments are expected in the near future. The funds were deposited into an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution.

On September 17, 1984, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by White's alleged violations. 49 FR 41098 (October 19, 1984). In the proposed decision we described a two-stage process for the distribution of the funds made available by the White consent order. In the first stage, we will refund money to identifiable purchasers of motor gasoline, No. 2 fuel oil and No. 2 diesel fuel who may have been injured by White's pricing practices during the period November 1, 1973 through April 30, 1974. This decision describes the information that a purchaser of White petroleum products should submit in order to demonstrate eligibility to receive a portion of the consent order funds. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed). However, because our determination concerning the disposition of any remaining funds will necessarily depend on the size of the fund, it is premature for us to address this issue. In response to our September 17, 1984 proposed decision, several States filed comments concerning the disposition of possible funds remaining at the conclusion of the first stage proceedings. Those comments will not be discussed here.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the White consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement, Economic Regulatory Administration: In re Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the White consent order funds.

II. Refunds to Identifiable Purchasers

The White consent order funds will be distributed to claimants who satisfactorily demonstrate that they have been injured by White's alleged pricing violations. The information available to us at this time regarding White's operations during the consent order period provides the names and addresses of many of the firm's customers. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of White motor gasoline, No. 2 fuel oil and No. 2 diesel fuel for the period November 1, 1973 through April 30, 1974. If the products were not purchased directly from White the claimant must include a statement setting forth its reasons for maintaining the product originated with White. In addition, a reseller or retailer of White petroleum products that files a claim generally will be required to establish that it was unable to pass the alleged overcharges on to its customers. To make this showing, a reseller or retailer claimant will be required to show that it maintained "bank" or unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *Ada*). In addition, it will have to demonstrate that, at the time it purchased the product from White, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges.

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed

equally in all sales of products made by White during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

The State of North Carolina has argued that the use of presumptions of injury is inappropriate in the present proceeding. North Carolina maintains, "It is incongruous to believe that resellers would retain the necessary records of purchases— and yet not retain records of their sales and associated prices." Additionally, North Carolina claims that the justification of the presumption method outlined in the Proposed Decision is based on a contradiction, in that consumers and resellers with small claims can both be presumed to have been injured by the same alleged overcharges. North Carolina asserts that only end-users should be awarded refunds based on a presumption of injury. After careful consideration, we find these arguments unpersuasive. For reasons stated below, we have determined that small resellers and retailers of White products should receive refunds based on a "presumption of injury" methodology.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). Contrary to North Carolina's assertions, the presumptions we will adopt in this case further the restitution process. They are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it bore a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.* 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the White consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from White and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claims is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, and the time period of the consent order was quite distant, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable.* *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) as cases cited therein.

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of the group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of White petroleum products need only document their purchase volumes from White to make a sufficient showing that they were injured by the alleged overcharges.

If a reseller of retailer made only spot purchases from White, however, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased market prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, Economic Regulatory Administration: In the Matter of Vickers Energy Corporation, 8 DOE ¶ 82,597 (1981) at 85,396–97 (hereinafter cited as *Vickers*). We

believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit sufficient evidence to establish that it was unable to recover the increased prices it paid for White petroleum products. *See Amoco* at 88,200.

A successful refund applicant will receive a refund based upon a volumentric method of allocating refunds. Under this method, a per-gallon refund amount is calculated by dividing the settlement amount by our best estimate of the total gallonage of products covered by the consent order. In the present case, based on information available at this time, the volumetric refund amount is $.00446233 per gallon, exclusive of interest.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

III. Application for Refund

After having considered all the comments received concerning the first stage proceedings tentatively adopted in our July 31, 1984 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased White petroleum products. An application must be in writing, signed by the applicant, and specify that it pertains to the White Petroleum Company Consent Order Fund, Case Number HEF-0196.

An applicant should indicate from whom the motor gasoline, No. 2 fuel oil, or No. 2 diesel fuel was purchased and, if the applicant is not a direct purchaser from White, it should also indicate the basis for its belief that the petroleum product purchased originated from White. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges. Each applicant should specify how it used the White petroleum product, such as whether it was a reseller or ultimate consumer. If the applicant is a reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish the OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1973 through January 27, 1981. The applicant must submit evidence to establish that it did not pass on the alleged injury to its customers, if the applicant is a reseller. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible. The applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its application for refund is being considered. *See* 10 CFR 205.9(d).

Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on he first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: White Petroleum Company Consent Order Refund Proceedings, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Applications for refund of a portion of the White consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.** *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

IV. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of comments containing proposals for alternative distribution schemes.

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by White Petroleum Company, pursuant to the consent order executed on August 31, 1979, may now be filed.

(2) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: January 14, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Note

*Resellers whose monthly purchases during the period for which a refund is claimed exceed $5,000 but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for purchases up to the $5,000 threshold amount without being required to submit additional evidence of injury. *See Vickers* at 85,396.

[FR Doc. 85-2584 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Apco Oil Corp.

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $1 million obtained as a result of a consent order which the DOE entered into with Apco Oil Corporation, formerly a refiner located in Oklahoma City, Oklahoma.

DATE AND ADDRESS: Applications for refund of a portion of the Apco consent order funds must be received within 90 days of publication of this notice in the **Federal Register.** All applications should refer to Case Number HEF-0008 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Douglas Friedman, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585. (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The decision relates to a consent order entered into by the DOE and the Apco Liquidating Trust, which settled all claims and disputes between Apco Oil Corporation and the DOE regarding the manner in which Apco applied the federal price and allocation regulations with respect to its sales of refined petroleum products during the period January 1, 1973, through January 27, 1981.

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Apco pursuant to the consent order. The DOE had decided to accept Applications for Refund from firms and individuals who purchased motor gasoline, middle distillates, or other covered products from Apco. Those who purchased fuel from an Apco service station may claim refunds based on purchases made between March 1, 1973, and October 16, 1978. Other claimants may claim refunds based on purchases made between March 1, 1973, and July 1, 1978. The Decision and Order provides that in order to receive a portion of the consent order funds, a purchaser must furnish the DOE with evidence which demonstrates that it was injured by Apco's pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Apco consent order funds was issued on October 20, 1983. 48 FR 50,407 (November 1, 1983).

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by customers who purchased petroleum products from Apco during the applicable period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: January 8, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Apco Oil Corporation.
Date of Filing: December 16, 1982.
Case Number: HEF-0008.

The procedural regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration's Office of Special Counsel (OSC) to request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures for refunds to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V.

In accordance with those regulatory provisions, on December 16, 1982, OSC filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with the Apco Liquidating Trust, as successor to the Apco Oil Corporation (Apco). Under the terms of the consent order, Apco agreed to make refunds in settlement of its alleged violations of the DOE petroleum price and allocation regulations during the period January 1, 1973, through January 27, 1981. As part of the settlement, DOE agreed to release Apco from any civil claims regarding Apco's compliance with the DOE regulations. Apco has remitted $1 million to the DOE and those funds are now being held in an interest-bearing escrow account under the DOE's jurisdiction pending instructions from the Office of Hearings and Appeals regarding their distribution.(1) With respect to distribution of the funds remitted by Apco, the consent order contains one qualification. Firms which receive any distribution will be required to execute an appropriate release and waiver of all claims against Apco concerning Apco's compliance with the Federal petroleum regulations prior to January 28, 1981.

I. Background

During the relevant time periods, Apco was an active "refiner" as that term was defined in 19 CFR 212.31 and 212.83. Apco was subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart E. That Subpart governed the maximum prices that could lawfully be charged by refiners in the sale of fuel oil, motor gasoline, and other covered products. In addition, Apco was subject to the Mandatory Petroleum Allocation Regulations set forth in 10 CFR Part 211. Among Apco's business activities were the refining of crude oil and unfinished oils into gasoline, middle distillates, and other covered products and the sale of those finished products to various customers. At the time DOE commenced the underlying compliance effort which preceded this refund proceeding, Apco was a corporation in the process of final legal dissolution following liquidation of its assets. Apco sold its refinery located in Arkansas City, Kansas, to Total Petroleum, Inc., effective April 1, 1978,and sold its other refinery, located in Cyril, Oklahoma, to Oklahoma Refining Corporation, effective July 1, 1978.

In connection with its compliance activities, OSC audited Apco's price and allocation practices, including the manner in which the firm applied the Federal petroleum price and allocation regulations to its business activities during the period January 1, 1973, through January 27, 1981 (hereinafter referred to as the "consent order period" or "settlement period"). Subsequently, Apco and the DOE entered into the consent order involved in this proceeding. The consent order resolves all of the issues raised during OSC's audit relating to the firm's compliance with the petroleum regulations administered by the DOE during the consent order period. In settlement of the DOE's claims against the firm, Apco agreed to deposit $1 million into an escrow account to be disbursed as directed by the DOE. In exchange, the DOE agreed to terminate the compliance proceedings. The consent order expressly provided that the DOE did not find and Apco did not admit that any regulatory violations had occurred. Consent Order at ¶ 303.

The consent order was executed on August 5 and August 7, 1982, by the Trustees of The Apco Liquidating Trust and on August 12, 1982, by the Department of Energy. It was published for public comment in the **Federal Register** on August 24, 1982. *See* 47 FR 36885 (1982). OSC received comments from the States of Indiana, Maine, North Carolina, Oregon, and Vermont, as well as from the American Association of Railroads concerning the proposed consent order. After considering those comments, OSC concluded that it should adopt the consent order as a final order on October 5, 1982. *See* 47 FR 43998 (1982).

On October 20, 1983, we issued a Proposed Decision and Order setting forth a tentative plan for the distribution of refunds to parties who were injured by Apco's alleged violations in the sale of gasoline, middle distillates, and other covered products during the consent

order period. 48 FR 50407 (November 1, 1983). In the proposed decision, we described a two-stage process for distribution of the Apco consent order funds. Specifically, we proposed to disburse funds in the first stage to claimants who could demonstrate that they were adversely affected by Apco's alleged overcharges in sales of refined petroleum products during the applicable period. We also proposed several procedures for disbursing any funds remaining after all meritorious claimants had received appropriate refunds.

The purpose of this decision is the establishment of procedures to be used for filing claims in the first stage of the Apco refund process. This decision sets forth the information that an Apco customer should submit in order to document its claim to a portion of the consent order funds. In setting these requirements, we will address comments filed in response to the first-stage proposal in the October 20, 1983 decision. Since our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the fund, it would be premature for us to address the issues raised by commenters concerning a second stage proceeding.[2] *See Office of Enforcement (Coline)*, 9 DOE ¶ 82,508 (1981).

II. Jurisdiction

In the proposed decision and in other decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See* 48 FR 50407 (1983); *Office of Enforcement (Olin)*, 9 DOE ¶ 82,539 (1982). We have received no comments challenging our authority to formulate special refund procedures in this case and will therefore exercise jurisdiction over distribution of the Apco consent order funds.

III. Refund Procedures

In the proposed decision, we explained the procedures we intended to use in determining refunds. In that determination, we proposed to use a modified volumetric system. Under a "pure" volumetric system, injured parties would receive a refund equal to the volumetric refund amount (the amount of money received pursuant to the consent order divided by the number of gallons of product sold by the consenting firm [3]) times the number of gallons purchased by the claimant. In the proposed decision, we suggested that a claimant's volumetric refund could be modified depending on consideration of an additional six factors:

(1) the amount of interest accumulated in the escrow account since the DOE received the settlement funds from Apco; (2) the number of qualified claimants, and the aggregate volume of their purchases compared to the amount of products sold by Apco during the consent order period; (3) the impact of the alleged violations on the claimant's business; (4) market conditions prevalent during the consent order period; (5) the claimant's position in the distribution chain, *i.e.*, whether it is a refiner, reseller or ultimate consumer; and (6) the manner in which the claimant's business is governed by federal, state or local regulatory agencies, or other relevant private contractual agreements such as those affecting agricultural cooperatives.

Apco Oil Corporation, Case No. HEF-0008 (proposed decision), slip op. at 9-10; 48 FR 50407 at 50,411. Additionally, we stated that for small firms, *i.e.*, those who had purchased an average of no more than 50,000 gallons per month, we would waive the requirement that a reseller demonstrate further that it did no pass the effects of any alleged overcharges through to its own customers. Firms which did not purchase fuel directly from Apco, but which could trace their purchases through a chain of distribution leading back to Apco, would also be eligible to apply for refunds.

The DOE received comments regarding the proposed first-stage refund procedures on behalf of the National Oil Jobbers Council (NOJC), G and G Oil Company (G and G), and Malone Oil Company (Malone). The NOJC suggests that firms be permitted to claim refund for products bearing the Apco brand name purchased before January 28, 1981, the closing date of the consent order. However, this would permit refunds to be approved for purchases not made from Apco. Apco sold its refineries on April 1 and July 1, 1978. Apco sold its refined product inventories to the firms purchasing the refineries on those same dates. *See Total Petroleum, Inc.*, 2 DOE ¶ 81,107 (1978). During 1977 and 1978, Apco also sold its service stations and the inventory in them. The last station was sold on October 16, 1978. *See* Memorandum of telephone conversation of December 11, 1984, between A.W. Greene, Manager of the Apco Liquidating Trust, and Douglas Friedman, OHA Staff Analyst. It would be highly impractical for us to attempt to limit the refund-eligible purchases of each applicant to those products bought before the date of the sale of one or more of the 398 Apco retail outlets, inasmuch as these dates vary from station to station and purchase to purchase. Accordingly, a fixed date is necessary for efficiency in processing, and we have decided to permit those who purchased products from any Apco service station to claim a refund based on purchases made up through October 16, 1978. We will therefore permit firms which purchased motor fuel from Apco service stations to apply for refunds based on purchases made between March 1, 1973, and October 16, 1978. All other claimants, including those who purchased products from Apco refineries, may claim refunds for purchases made between March 1, 1973, and July 1, 1978.

The NOJC also stated that it supports the use of a modified volumetric system, *i.e.*, one in which we would make adjustments to refunds based on the number of qualified claimants and their share of Apco's sales volume, but the association requested clarification of how such a system would work. It is apparent that an explanation of how the six factors operate is necessary. The first factor, the amount of interest accumulated, need not be considered a separate item, since successful refund applicants always recieve a proportionate share of the accrued interest. *See, e.g., Office of Enforcement*, 9 DOE ¶ 82,551 at 85,267 (1982) (*OKC*). In the period since the proposed decision was issued, we have determined that we will not use the second element listed, the relative number and size of claims. We have determined that the application of this factor would be unworkable and will therefore adopt a pure, rather than a modified, volumetric system. This system is easier to administer and provides applicants with a clearer estimate of their potential refunds than a modified system does. They will therefore be better able to make an informed choice on whether to expend the effort required to prepare and document a refund application. *See* volumetric discussion *infra*.

The third and fourth proposed factors concern the level of injury suffered by a firm. Under a volumetric system, there is a presumption that each firm suffered injury at the volumetric level. This presumption is rebuttable, however. A firm which can show that it suffered a disproportionate share of the alleged overcharges is eligible for a larger refund. *See, e.g., Standard Oil Co. (Indiana)/Army & Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).[4] It should be clear, however, that a firm claiming an injury greater than the volumetric amount must document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, to show that it did not pass the alleged

overcharges through to its own customers, and that market conditions not permit it to pass through those increased costs. Thus, certain firms may make specific use of the third and fourth factors, while others may simply accept the volumetric presumptions regarding those factors. The fifth factor, a claimant's position in the distribution chain, affects the type of proof required for a demonstration of injury, and does not necessarily affect the amount of refund. *See* end-user discussion *infra*. Finally, the sixth factor permits firms to which it applies, *e.g.*, utilities and cooperatives, to be treated as end users for purposes of determining injury. *See* discussion *infra*.

Using a volumetric system involves adopting a presumption that alleged overcharges were equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 10 DOE ¶ 85,054(1984) and cases cited therein at 88,164.

The NOJC has also suggested that we adopt presumptions of injury similar to those adopted in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*). However, the presumptions adopted in that decision are not appropriate in this case. Those presumptions were valid because upon investigation we determined that Amoco's prices had generally followed the national average prices. We were therefore able to determine, by using detailed national price data available for all levels of distribution, the share of Amoco's alleged overcharges absorbed at each level of distribution. We do not have information in this case which shows how Apco's prices changed over time, from region to region, vis-a-vis national market prices, nor do we have information which would indicated that Apco's prices followed the national average prices; adopting the *Amoco* presumptions is therefore not appropriate in this case.

G and G and Malone submitted virtually identical comments in which they urged that the threshold level below which no specific showing of injury is required be either raised significantly above the 50,000-gallon-per-month level we proposed or abandoned entirely. We have reconsidered, and agree with G and G and Malone that 50,000 gallons per month is too low a threshold. The reason we adopt a presumption that claimants seeking small refunds were injured by Apco's pricing practices is that the small claimants were in the chain of distribution where the alleged overcharges occurred, and bore some of the impact of the alleged overcharges, at least initially. In order to support a detailed claim of injury, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, since it allows OHA to process a large number of routine refund claims quickly and use its limited resources more efficiently. The presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact. Using a threshold which is too low could defeat the purpose of the presumption. On the other hand, removing the threshold entirely would also defeat the purpose of the presumption, since firms potentially eligible for larger refunds stand to gain enough money to make it worth their while to submit more detailed applications for refund. Following the reasoning in *Texas Oil and Gas Corp.*, 10 DOE ¶ 85,069 (1984), we will use a dollar amount, rather than a purchase volume to describe the threshold. In this case, the consent order period is quite distant, and we believe that the establishment of a presumption of injury for all claims of $5,000 or less reasonable.(5) *See Texas Oil & Gas Corp.; Office of Special Counsel (Conoco)*, 11 DOE ¶ 85,226 (1984) and cases cited therein. Firms claiming refunds of $5,000 or less will be required to document only their purchase volumes. Resellers and retailers claiming greater refunds must demonstrate that they actually suffered the injury for which they claim a refund. The type of showing they must make is similar to the type of showing a firm claiming injury at a level greater than the volumetric level must make.(6)

We also find that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement (PVM)*, 10 DOE ¶ 85,072 (1983); *See also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end users of Apco petroleum products need only document their purchase volumes from Apco to make a sufficient showing that they were injured by the alleged overcharges.

In addition, firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that they absorbed the alleged Apco overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Apco's alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives will likewise directly influence the prices charged to their member customers. Consequently, such firms will be added to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel (Tenneco)*, 9 DOE ¶ 82,538 (1982); *and Office of Special Counsel (Pennzoil)*, 9 DOE ¶ 82,545 at 85,244 (1982). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

A reseller or retailer which made only spot purchases from Apco will generally

not be eligible for a refund because it is not likely to have suffered an injury. As we have previously stated with respect to spot purchases:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe that same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Apco refined petroleum products. *See Amoco*, 10 DOE at 88,200.

Finally, we will establish a $15 minimum for refund claims. We have found through experience in prior refund cases that the cost of processing claims for amounts less than $15 outweighs the benefits of restitution for such claims. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

IV. Application for Refund

We have determined that by using the procedures described above, we can distribute the Apco consent order as equitably and efficiently as possible. Accordingly, we will now accept applications for refunds from individuals and firms who purchased petroleum products from Apco between March 1, 1973, and July 1, 1978, or between March 1, 1973, and October 16, 1978, if the purchases were made from Apco service stations.

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of petroleum products from Apco. Claimants must also indicate whether they have previously received a refund, from any source, with respect to this proceeding. Each claimant must indicate its level in the distribution of Apco products, *i.e.*, whether it was a reseller, retailer, or end user. Each applicant must also state whether there has been a change in ownership of the firm since the audit period, and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. It is not necessary for an applicant to execute a release and waiver of all claims against Apco concerning Apco's compliance with the federal petroleum regulations prior to January 28, 1981 in order to file an Application for Refund. However, such a waiver must be executed before the DOE will issue any refund to an applicant. *See Vickers*, 8 DOE at 85,400. Thus, an applicant will be able to find out how large its refund will be before it decides whether to accept that refund or to pursue another course of action.

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.183(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should refer to Case Number HEF–0008 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by Apco Oil Corporation pursuant to the consent order executed on August 12, 1982, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: January 8, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(1) As of November 30, 1984, the escrow fund contained $1,206,950.14, including accrued interest.

(2) We received comments concerning the second stage on behalf of the States of Arkansas, Delaware, Iowa, Kansas, Louisiana, North Carolina, North Dakota, Rhode Island, Texas, and West Virginia.

(3) In this case, the volumetric figure is $0.000490 per gallon, excluding accrued interest. This per gallon factor is computed by dividing the $1 million available for distribution under the Apco consent order by 2,039,552,000 gallons, which represents Apco's total sales of all covered products during the consent order period.

(4) Resellers claiming greater refunds who are unable to establish that they did not pass through the price increases will be eligible for a refund of up to the threshold level of $5,000. *See* threshold discussion *infra*. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981) (Vickers); *see also* Office of Enforcement (Ada) 10 DOE ¶ 85,029 at 88,125 (1982).

(5) To receive $5,000, a claimant must have purchased 10,204,081 gallons of product from Apco during the course of the entire refund period, an average of slightly below 160,000 gallons per month.

(6) *See* footnote 4 *supra*.

[FR Doc. 85–2581 Filed 1–31–85; 8:45 am]

BILLING CODE 6450–01–M

Modification of Special Refund Procedures; Gulf Oil Corp.

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of modification of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces that it is extending the deadline for filing Applications for Refund from funds obtained from Gulf Oil Corporation in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by March 31, 1985, should conspicuously display a reference to case number HFX–0101, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice was given of the issuance of a Decision and Order which implemented special refund procedures on June 29, 1984, 49 FR 28216 (July 10, 1984). The Decision and Order established procedures to distribute funds obtained as a result of a settlement between Gulf Oil Corporation and the DOE. The settlement resolved certain disputes between DOE and Gulf concerning interaffiliate foreign crude oil transactions and purchases of foreign crude oil by Gulf through a foreign

affiliate during the period August 19, 1973 through January 31, 1976.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. The Department of Energy is hereby extending the deadline for receivng such applications. Applications will now be accepted beyond the deadline of January 7, 1985, as announced in the June 29, 1984 Decision and Order. All applications should be postmarked by March 31, 1985, and should be sent to the address set forth in the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: January 2, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-2582 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Kiesel Company and L.P. Rech Distributing Co.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Depatment of Energy solicits comments concerning the appropriate procedures to be followed in refunding $7,500 and $7,853.08 in consent order funds to members of the public. This money is being held in escrow following the settlement of two enforcement proceedings involving Kiesel Company and L.P. Rech Distributing Company, both reseller-retailers of motor gasoline. Kiesel Company is located in St. Louis, Missouri, L.P. Rech Distributing Company is in Roundup, Montana.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case numbers HEF-0107, HEF-0161.

FOR FURTHER INFORMATION CONTACT: Amy Resner, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to two consent orders entered into by Kiesel Company (Kiesel) and L.P. Rech Distributing Company (Rech). The Kiesel consent order settled possible pricing violations in the firm's sales of motor gasoline to customers during the period March 1, 1979 through July 31, 1979; the Rech consent order settled alleged pricing violations in the firm's sale of motor gasoline to its customers during the three month period of September 1, 1979 through November 30, 1979.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of two escrow accounts funded by Kiesel and Rech pursuant to the respective consent orders. In the case of Kiesel, the DOE has tentatively decided that the consent order funds should be distributed to the 55 first purchasers after each has filed an application for refund. In the case of Rech, the DOE proposes that the consent order funds should be distributed to the one purchaser after the firm files an application for refund. The purchasers in both of these cases were identified by DOE audits and were allotted funds based on presumptions of injury which the DOE has utilized in past proceedings. In both cases, however, applications for refund will be accepted from purchasers not identified by the DOE audits. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding wil be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Dated: January 10, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Kiesel Company and L.P. Rech Distributing Company.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0107 and HEF-0161.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to readily ascertain the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1982), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

I. Background

In accordance with the provisions of Subpart V, ERA, on October 13, 1983, filed a Petition for the Implementation of Special Refund Proceedings in connection with consent orders which it entered into with Kiesel Co. (Kiesel) and L.P. Rech Distributing Co. (Rech). Each of these firms was a "reseller-retailer" of "covered" products as those terms were defined in 10 CFR 212.31. Kiesel's main office is in St. Louis, Missouri; Rech is located in Roundup, Montana. A DOE audit of each firm's record revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a consent order with DOE. Each consent order refers to ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, each consent order states that the consent order firm does not admit that it committed any such violations. A brief discussion of other pertinent matters covered by each consent order follows.

The Kiesel consent order covers the period March 1, 1979, through July 31, 1979. The DOE audit alleges that during that period, the firm committed possible pricing violations amounting to $42,100.08 with respect to its sales of

motor gasoline. In order to settle all claims and disputes between Kiesel and DOE regarding the firm's sales of motor gasoline during the audit period, Kiesel and the DOE entered into the consent order on January 13, 1981. According to the Kiesel consent order, the firm agreed to deposit $7,500 (plus interest for late payment) into an interest bearing escrow account for ultimate distribution by DOE. The consent order funds were paid in full on February 2, 1981, without any interest being due.

The Rech consent order covers the period September 1, 1979, through November 30, 1979. The DOE audit revealed possible pricing violations amounting to $14,111.65 with respect to sales of motor gasoline during the audit period. In order to settle all claims and disputes between Rech and DOE regarding the firm's sales of motor gasoline during the audit period, Rech and the DOE entered into the consent order on September 15, 1980, in which the firm agreed to make refunds amounting to $15,621.72 (including interest). According to the Rech consent order, the alleged overcharges affected two classes of customers. Separate processes were established by which Rech would make refunds to its customers. Initially, Rech agreed to refund $7,768.64, including interest, directly to its retail customers, on or before September 30, 1980. In addition, on September 16, 1980, the firm placed $7,853.08, including interest, in an escrow account for DOE to distribute to wholesale purchasers.

This Decision concerns the distribution of the consent order funds that were deposited in both the Kiesel and Rech escrow accounts, plus accrued interest to date.

II. Proposed Refund Procedures

The basic purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have determined to rely in part on the information contained in the ERA audit files. This approach is warranted based upon our experience in prior Subpart V cases where all or most of the purchasers of a firm's products are identified in the audit file. *See e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination with respect to the identity of the allegedly overcharged parties is possible.

During DOE's audit of Kiesel, 75 first purchasers were identified by ERA as having allegedly been overcharged. In the case of the Rech audit, all of the alleged overcharges were attributable to purchases made by a single firm. We recognize that the DOE audit files do not necessarily provide conclusive evidence as to the identity of possible refund recipients or the amount of money that they should receive in a Subpart V proceeding. Nevertheless, it is reasonable to use the information contained in the audit files for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified by the audit. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Brown Oil Co.*, 12 DOE ¶ 85,028 (1984); and *Reinhard Distributors, Inc.*, 12 DOE ¶ ——— (December 20, 1984). The first purchasers identified by the audits, along with the respective shares of the settlement amount allotted to each by ERA, are listed in Appendices A, B, and C.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether these first purchasers were actually injured, or whether they passed through the alleged overcharges. In addition to the information in the record at this time, we propose to adopt certain presumptions in order to determine a purchaser's injury and thereby distribute the escrow accounts in these cases. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we propose to adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund procedures, in this case we propose to adopt a presumption of injury with respect to small claims.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Kiesel and Rech consent order is based on a number of considerations. *See, e.g., Uban Oil Oc.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive and, in the case of small claims, the cost to the firm of gathering this factual information, and the cost to OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows OHA to process a large number of routine refund claims quickly, and to use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Kiesel and Rech and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumption which we propose to adopt, a reseller or retailer claimant would not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose to follow the same approach in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes

purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, and the time period of the consent order was quite distant, we propose that the establishment of a presumption of injury for all claims of $5,000 is reasonable. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited therein. After analysis of the information in the record, it appears that all 75 of Kiesel's customers listed on Appendix A made small purchases of Kiesel's products. The refund authorized for Rech's single customer, Main Street Conoco (Main Street), however, is larger than the amount which a firm may be entitled to receive under the small claims presumption we have proposed.

On the basis of the information in the record, and after adopting a presumption of injury with respect to customers who made small purchases, we propose to distribute a portion of the escrow funds, plus accrued interest to date, to the first purchasers identified by ERA in the amounts specified in Appendices A and B. (*1*) We believe that this is the most equitable, administratively efficient and appropriate method of accomplishing restitution in this proceeding. In order to actually receive a refund in either the Kiesel or Rech proceeding, each customer will still be required to file an application for refund (*see* discussion *infra*).

However, since the refund allotted to Main Street, is larger than $5,000—and therefore larger than a "small claim"—we will require the firm to make a specific demonstration of injury prior to its receiving the full refund allotted to it in Appendix B. As in previous special refund cases, we will ask Main Street to show that it did not pass the effects of Rech's alleged regulatory violations through to its own customers. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 (1981). While there are a variety of means by which the firm could make this showing, Main Street should generally demonstrate that at the time it purchased Rech's products, market conditions would not permit it to pass the alleged overcharges on to its own customers in the form of higher prices. In addition, the firm must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982). (*2*)

We are not prepared, based on the information now available to us, to distribute any of the Kiesel consent order funds to the purchasers identified in Appendix C. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the modest benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 88,225 (1982). *See also* 10 CFR 205.286(b). Each of the firms listed in Appendix C purchased less than 2,700 gallons of motor gasoline in total. Some involve purchases as small as 66 gallons. While refunds based on purchase levels of this order of magnitude may be appropriate in other Subpart V proceedings, especially where they can be aggregated in some manner in order to reduce administrative costs, in this case they are simply too small to merit individual consideration.

We also have no other information regarding the identity or location of the last 13 purchasers listed in Appendix A. We are therefore presently unable to proceed with a distribution of refunds to them. We will contact Kiesel, (*3*) in addition to publishing notice of this Proposed Decision and Order in the **Federal Register**, in an effort to better identify these purchasers. We will accept information regarding the identity and present locations of these purchasers for a period of 90 days following publication in the **Federal Register** of notice of a final Decision and Order in this proceeding. (*4*)

In addition, we recognize that there may have been other first purchasers not identified by the ERA audit, as well as downstream purchasers, who may have been injured as a result of Kiesel's and Rech's pricing practices during the respective audit periods and would therefore be entitled to a portion of the consent order funds. If additional meritorious claims are filed, we will adjust the figures listed in the Appendices accordingly. Actual refunds will be determined only after analyzing all appropriate claims.(*5*)

In order to receive a refund, each claimant will be required either to submit a schedule of its monthly purchases of motor gasoline from Kiesel, or Rech, or to submit a statement verifying that it purchased petroleum products from one of these firms and is willing to rely on the data in the relevant audit file. Claimants must indicate, as well, whether they have previously received a refund, from any source with respect to the alleged overcharges identified in the ERA audits underlying this proceeding. Purchasers not identified by the ERA audits will be required to provide specific information concerning the date, place, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

III. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all meritorious claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage refund procedure is completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

(1) The refund amount remitted to the Department of Energy by Kiesel Company, pursuant to the consent order executed on January 13, 1981, will be distributed in accordance with the foregoing decision.

(2) The refund amount remitted to the Department of Energy by L.P. Rech Distributing Company, pursuant to the consent order executed on September 15, 1980, will be distributed in accordance with the foregoing decision.

Footnotes

(*1*) The share of the escrow fund which the listed purchasers in Appendix A may receive represents 17.8% of the amount each was allegedly overcharged, and is consistent with the terms of the Kiesel consent order which settled for 17.8% of the total amount of alleged overcharges identified by the audit. L.P. Rech, however, agreed in the Rech consent order to refund the entire amount it had allegedly overcharged its one identified customer. Therefore, the portion of the

escrow account which the purchaser listed in Appendix B is to receive, represents 100 percent of the amount it was allegedly overcharged.

(2) We have determined in previous special refund cases that a purchaser who was in a position to be injured by a supplier's alleged overcharges should receive the full refund allotted to it in the DOE audit, even if this amount slightly exceeds $5,000. *See* Reinhard Distributors Inc., 12 DOE ¶ ——— (December 20, 1984). In that case we found that one of Reinhard's purchasers was a partial end-user, had a small sales volume, and was situated in a small community and lacked alternative suppliers. We therefore determined that this customer was entitled to a refund of over $5,000, as set forth in the DOE audit. The refund authorized for Main Street also only exceeds $5,000 by a small amount. Therefore, if Main Street can submit information which would demonstrate that it was in a similar position to Reinhard's customer, we will consider granting it the full refund as set forth in Appendix B. If Main Street does not choose to make a demonstration of injury, it may rely on our records and receive a refund of up to $5,000 under the small claims threshold we have proposed in this case.

(3) Mrs. Pat Kiesel, President of Kiesel Company, in responding to ERA's requests for the addresses of these purchasers, stated that they would be provided when notice was given of the refund procedures to be used in distributing the Kiesel escrow funds. See, ERA Escrow Verification Report, page 2.

(4) We will terminate the initial stage of this refund proceeding and reserve the funds for distribution in a subsequent proceeding if we are unable to locate these purchasers.

(5) Purchasers identified in the ERA audits as having allegedly been overcharged may also submit information to show that they should receive larger refunds than those indicated in the Appendices.

Appendix A—Kiesel Company

First purchasers	Portion of settlement amount [1]
Taylor Excavating, 3917 Reavis Barracks Rd., St. Louis, Mo. 63132	$40.23
Security Armored Car, 1022 S. 9th St. St. Louis, Mo. 63104	273.61
Grey Eagle Distributing, 2340 Mill Park Dr., St. Louis, Mo.	204.80
Kirchner Ind., Inc., 2346 Palm, St. Louis, Mo. 63107	28.39
Gould, Inc., 940 West Port Plaza, St. Louis, Mo. 63141	36.65
Tully Equipment, 3900 Green Park Road, St. Louis, Mo. 63125	16.22
Mt. Lebanon Guardian Cemetery, 11101 St. Charles Rock Rd., St. Louis, Mo. 63114	20.41
C. Rollo Construction, 5000 Kemper Ave., St. Louis, Mo. 63139	94.08
Cent. & Mech. Ind., Inc., 146 President St., St. Louis, Mo. 63118	27.58
Chemlawn, 11422 Schenk, St. Louis, Mo.	28.42
Biggs Properties, Timberlake Apts., 1177 Timberbrook Dr., St. Louis, Mo. 63122	16.14
Bussen Quarries, 5000 Bussen Rd., St. Louis, Mo. 63129	18.16
St. Louis Ship. Div., Pott Inc., 501 N. 7th Street, St. Louis, Mo. 63101	16.9
Catholic Cemeteries of St. Louis, 7301 Watson Road, St. Louis, Mo. 63119	44.80
Vollmer Bros. Contr., 911 N. Grand Blvd., St. Louis, Mo. 63106	18.15
I-55 Service Center, 4553 S. Broadway St., St. Louis, Mo. 63111	149.34
Tonsing Sales & Svc., 4011 Bayless Ave., St. Louis, Mo. 63125	524.57
Baker Mobil Svc., 2812 Moravec Dr., St. Louis, Mo.	94.52
B & W Auto Svc., 8025 Alabama Ave., St. Louis, Mo. 63111	509.78
BJ Petroleum, 6300 Deering Ct., St. Louis, Mo. 63125	251.00
Southwest Service, 5301 Arsenal St. St. Louis, Mo. 63139	184.68
Allen Cab, 1414 N. Sarah St., St. Louis, Mo. 63113	60.90
Missouri Petroleum, 1620 Woodson Rd., St. Louis, Mo. 63114	62.46
Missouri State Hyw. Comm., 329 S. Kirkwood Rd., St. Louis, Mo. 63122	497.96
City of Ferguson, 110 Church St., Ferguson, Mo. 63135	289.01
Bi-State Development Agency, 701 N. 1st St., St. Louis, Mo. 63101	350.49
St. Louis Board of Education, 3458 Cook Ave., St. Louis, Mo. 63106	679.04
Jefferson Barracks, Nat'l Cemetery, 101 Memorial Dr., St. Louis, Mo. 63125	40.89
V.A. Hospital, 1529 Market St., St. Louis, Mo. 63103	21.19
Rockwood School Dist., 111 East North St., Eureka, Mo. 63025	157.59
Budrouch Excavation, 2520 Lemay Ferry Road, St. Louis, Mo. 63125	76.14
Branch Metals, 620 Saint Cyr Road, St. Louis, Mo. 63137	59.25
Fenster & Sons Iron, 9620 N. Broadway, St. Louis, Mo. 63137	22.83
ACF Industries, 9666 Olive St. Rd., St. Louis, Mo. 63132	53.74
Union Electric, 316 N. 12th St., St. Louis, Mo. 63101	954.75
Biebel Bros. Roofing, 1600 N. Lindbergh Blvd., St. Louis, Mo. 63132	146.90
Service Rental Co., 8601 New Hampshire Ave., St. Louis, Mo. 63123	30.58
Jay's Texaco, 2115 Rodman Rd., St. Louis, Mo. 63136	392.38
Monsanto, 800 N. Lindbergh, St. Louis, Mo. 63141	30.39
City of Valley Park, Valley Park, Mo. 63088	67.71
Lindy's Auto Service, 4390 Telegraph Road, St. Louis, Mo. 63129	12.00
First purchasers with no available address:	
St. Louis Park Hill Cemetery	15.43
St. Louis Air Nat'l Guard	88.64
C. King Motor Service	35.55
Turley Martin	23.97
Jenkins, Guerin, Inc.	46.74
Grebe Oldsmobile	29.41
Hills Farm	23.47
St. Louis Interagency Car Pool	83.03
U.S. P.F.O. for Missouri	19.69
St. Louis Bulk Mail Center	49.70
Bommarito Oldsmobile	113.85
Guy Mullen Ambulance	100.08
Ace Scrap Metal	173.74

[1] Does not include interest. Actual refunds will include the interest which has accured on these amounts since DOE received the Kiesel consent order funds on February 2, 1981.

Appendix B.—Rech Distributing Company

First purchaser	Portion of settlement amount [1]
Main Street Conoco, Roundup, Montana 59072	$7,853.08

[1] Includes principal and interest through June 30, 1980. The actual refond will also include the additional interest which has accrued on this amount since DOE received the Rech consent order funds on September 16, 1980.

Appendix C—Kiesel Company

CLAIMS UNDER $15

First purchaser	Portion of settlement amount
A. Spiritas Wrecking	$0.46
Morris Linen & Towel	9.61
Ralston Purina	3.09
Newgar Materials	.39
General American Ins.	2.77
St. Louis Wood Products	6.79
New Picker Cemetery	.69
Arrowhead Golf Club	7.58
Benco Bommarita Construction	8.80
Host International	9.51
Lakeside Center for Boys	5.64
U.S. Coast Guard, 2nd Dist.	6.36
St. Louis Community College	1.86
Federal Barge Lines	1.02
Mercy Center	3.47
LaSalle Iron Works	2.27
Alton Fire Portection Dist.	9.08
Norfolk & Western R.R.	7.83
Kirchner Enterprises	4.00

[FR Doc. 85-2580 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; J.E. DeWitt, Inc.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding two consent order funds totalling $14,450.18 to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving J.E. DeWitt, Inc. (Case Number HEF-0062) and Hines Oil Company (Case Number HEF-0092).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. All comments should conspicuously display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b) notice is hereby given of the issuance of the Proposed Decision and Order set out

below. The Proposed Decision related to consent orders entered into by J.E. DeWitt, Inc. and Hines Oil Company (hereinafter collectively referred to as the consent order firms). Each consent order involves a particular audit period and a distinct consent order fund as set forth in the Proposed Decision. The consent orders settled possible pricing violations in the consent order firms' sales of refined petroleum products to customers during the relevant audit periods.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow accounts funded by the consent order firms pursuant to the consent orders. The DOE has tentatively decided that the consent order funds should be distributed to those customers of the consent order firms who established that they were injured by one of the consent order firms' alleged overcharges. Such customers will receive refunds proportionate to the volume of petroleum products they purchased from one of the consent order firms. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in the proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Dated: January 10, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Names of Firms: J.E. DeWitt, Inc. and Hines Oil Company.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0062 and HEF-0092.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in the order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that the OHA implement proceedings to distribute the funds received pursuant to Consent Orders entered into by the DOE and the following parties: J.E. DeWitt, Inc., (DeWitt) of South El Monte, California and Hines Oil Company (Hines) of Murphysboro, Illionis (hereinafter collectively referred to as the consent order firms).

I. Background

Each consent order firm is a "reseller-retailer" of motor gasoline, as this term was defined in 10 CFR 212.31. ERA audits of the consent order firms revealed possible violations of the Mandatory Petroleum Price Regulations. Subsequently each of these firms entered into a separate Consent Order with the DOE in order to settle its disputes with the DOE concerning certain sales of motor gasoline. Each Consent Order refers to the ERA allegations of overcharges but notes that no findings of violation were made. In addition, each Consent Order states that the consent order firm does not admit that it committed any such violations.

Pursuant to these Consent Orders, the firms agreed to pay to the DOE specified amounts in settlement of their potential liability for alleged overcharges in sales to their respective customers during the consent order periods. The firms' payments are currently being held in separate interest-bearing escrow accounts pending distribution by the DOE. The names and locations of the firms, the settlement amounts, and the dates of the consent order periods are set forth in Appendix A to this Proposed Decision.

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured by alledged or adjudicated violations, or is unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*).

II. Proposed Refund Procedures

We have considered the ERA petition to implement Subpart V proceedings with respect to the two consent order funds and have determined that it is appropriate to establish such proceedings. Insofar as possible, these consent order funds should be distributed to those customers of the consent order firms who were injured by the price increases which allegedly were in violation of DOE regulations. In the case of Hines, the ERA audit files identify a number of reseller customers, i.e., retailers and wholesalers, who purchased motor gasoline directly from Hines during the audit period. Their names and addresses are set forth in Appendix B to this Proposed Decision and Order. While no specific alleged overcharge amounts are indicated for these customers, in our view they may well have been adversely affected by the alleged overcharges by Hines and should be given notice of this proceeding and an opportunity to request a refund. (1) In the case of DeWitt, the ERA audit files do not identify any customers who purchased motor gasoline from DeWitt during the audit period. We recognize, however, that the unidentified purchasers of DeWitt motor gasoline, as well as any customers of Hines motor gasoline not mentioned in the ERA audit files, may have been injured by the pricing practices of one of the consent order firms during the relevant consent order period.

We therefore propose to establish a claims procedure in which we will accept applications for refund from customers, including those not listed in Appendix B, who can demonstrate that they were injured as a result of any alleged overcharges made by one of the consent order firms during the appropriate consent order period.

Several of the consent order firms' customers are petroleum product resellers, i.e., retailers and wholesalers. We propose that these firms be required to demonstrate that they did not pass on to their customers the price increases implemented by the consent order firm. *See, e.g., Vickers.* In order to qualify for a refund, resellers or a consent order firm's motor gasoline must show that during the consent order period they would have maintained their prices for the gasoline at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this

showing, a reseller should generally demonstrate that at the time it purchased motor gasoline from a consent order firm, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, the reseller must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.(2) The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co. (Indiana)*, 10 DOE 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982)

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of motor gasoline made by the consent order firms during the relevant consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e) The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233-34 (1984); *Richardson Carbon and Gasoline Co./ Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

In each of the two cases being considered here, the information available in the ERA audit files is insufficient to base refunds on the amount each individual applicant was allegedly overcharged. As indicated above, the DeWitt audit files do not identify any of DeWitt's customers during the consent order period. Although the Hines audit files do identify some of Hine's customers, they do not provide individual alleged overcharge amounts. We therefore propose to use the volumetric method to allocate the consent order funds. To determine the volumetric factor, each consent order funds. To determine the volumetric factor, each consent order fund will be divided by the estimated total volume of motor gasoline sold by the consent order firm during the relevant consent order period.(3) The per gallon volumetric refund amounts are set forth in Appendix A. In each case, this results in a refund amount for each gallon of motor gasoline which an applicant purchased from a consent order firm. The interest which has accrued on the money in each escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the Consent Orders is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly, and use its limited resources more efficiently. Finally, we know that these smaller claimants did purchase motor gasoline from one of the consent order firms and were in the chain of distribution, where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. (4) Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We proposed to follow the same approach in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In the present case, where the volumetric refund amounts are fairly low, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable. (5) *See id.; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the Consent Orders. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See office of Enforcement, Economic*

Regulatory Administration: In the Matter of PVM Oil Associates, Inc., 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that end-users of motor gasoline purchased from one of the consent order firms need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges.

We further proposed to establish a minimum amount of $15 for refund claims. (6) We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Amoco; Uban Oil Co.*, 9 DOE ¶ 82,451 at 85,225 (1982). *See also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final Decisions in the **Federal Register**, copies will be provided to those customers of Hines whose names and addresses we have obtained from the ERA audit files.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by the consent order firms listed in Appendix A to this Proposed Decision and Order will be distributed in accordance with the foregoing decision.

Footnotes

(1) Several of the firms listed in Appendix B have apparently changed ownership since the consent order period. In order for the current owners to be eligible for a refund on the basis of alleged overcharges to the firm during the consent order period, they will be required to provide the name and current address of the former owner or a sales contract or other document which supports their claim. *See Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984).

(2) Some of the motor gasoline sales covered by the Consent Orders occurred subsequent to the amendment of the retailer price rule that eliminated the bank requirement for retailers. *See* 10 CFR 212.93(a)(2), 44 FR 42542 (July 19, 1979) (effective July 15, 1979). Accordingly, retailers will not be required to submit bank information concerning any purchases of gasoline they may have made after July 15, 1979.

(3) The Hines Consent Order required Hines to refund $6,897.69 to its end-user (consumer) customers through price rollbacks. The monies to be paid to the DOE by Hines were designated for distribution to resellers. Accordingly, we have based the volumetric refund level for Hines solely on Hines' sales volumes to resellers, which we have extrapolated from total sales volumes shown in the ERA audit files. In view of the elimination of motor gasoline price controls less than a month after the Hines Consent Order was executed, it is unlikely that Hines' end-user customers received significant refunds through the price rollbacks provided for in the Consent Order. We are therefore permitting end-users to apply for refunds in this proceeding. We will not however, make any adjustments to the per gallon volumetric refund level, since we expect that few, if any, end-users will be eligible for refunds. (See footnote 6).

(4) We also propose that resellers who made only spot purchases from the consent order firms be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396-97; *See also Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimants who were spot purchasers must submit additional evidence to establish that they were unable to exercise considerable discretion as to where and when they made the purchase(s) on which their refund claims are based.

(5) In the case of Hines, the entire consent order amount is less than $5,000. We will therefore presume that all reseller customers of Hines gasoline during the consent order period were injured by the pricing practices settled in the Hines Consent Order. Accordingly, these customers will not be required to submit additional evidence of injury beyond purchase volumes in order to qualify for a refund. In the case of DeWitt, any reseller whose potential refund exceeds the threshold level may elect to apply for a refund based on the threshold amount.

(6) Under the volumetric refund level set forth in Appendix A, a customer of Hines Gasoline would have to have purchased more than 6,000 gallons of motor gasoline during the Hines consent order period in order to be eligible for a refund above the $15 threshold. It is therefore unlikely that any end-user who purchased gasoline from Hines at the retail level would be eligible for a refund. However, any end-user who purchased more than 6,000 gallons of Hines gasoline during the Hines consent order period may apply for a refund.

Appendix A

Name of firm	Consent order period	Consent order amount	Volumetric amount
J.E. DeWitt Inc., P.O. Box 3867, South El Monte, CA, 91733.	May 1, 1979 to July 31, 1979.	$13,450.18	$0.001414
Hines Oil Company, 207 N. 23rd St., Murphysboro, IL 62966.	Mar. 1, 1979 to July 31, 1979.	1,000.00	0.002487

Appendix B—List of Customers

DeWitt Oil, Inc.

No identified customers

Hines Oil Company

Hill's Sunoco, Walnut Street, Murphysboro, IL 62966
Kincaid Baot & Motor, Walnut Street, Murphysboro, IL 62966
Kincaid Village Marina, Linkaid Lake, Murphysboro, IL 62966
Interstate Shell, Interstate 57 & Youngs Street Exit, Marion, IL 62959
Mark-Jerry's Sunoco, Route 51, Ramaroa, IL 62888
Rod's-Stearn's S.S., Route 51, Elkville, IL 62932
Royal's Sunoco, Route 149, Royalton, IL 62983
Ted Brown's S.S., Route 149, Hurst, IL 62949
Vergennes Petroleum, Route 13 & 127, Vergennes, IL 62994
West End Sunoco, Route 51, Dubois, IL 62831
Westown Shell, Route 13, Carbondale, IL 62901
White's Sunoco, 127 South, Murphysboro, IL 62966
Wright Tire S.S., 14 Street, Murphysboro, IL 62966

[FR Doc. 85-2578 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Moore Terminal and Barge, Ltd., and Point Landing, Inc.

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $50,000 and $100,000 in consent order funds to members of the public. This money is being held in escrow following the settlement of two enforcement proceedings involving Moore Terminal and Barge, Ltd., and Point Landing, Inc., both reseller-retailers of refined petroleum products. Moore Terminal and Barge is located in

Monroe Louisiana, Point Landing is in Harahan, Louisiana.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0132, HEF-0152.

FOR FURTHER INFORMATION CONTACT: Amy Resner, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to two consent orders entered into by Moore Terminal and Barge, Ltd. (Moore) and Point Landing, Inc. (Point Landing). The Moore consent order settled possible pricing violations in the firm's sales of petroleum products to customers during the period October 1, 1973 through September 30, 1974; the Point Landing consent order settled alleged pricing violations in the firm's sale of petroleum products to its customers during the period of October 1, 1973 through November 30, 1974.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of two escrow accounts funded by Moore and Point Landing pursuant to the respective consent orders. In the case of Moore, the DOE has tentatively decided that the consent order funds should be distributed to the two first purchasers after each has filed an application for refund. In the case of Point Landing, the DOE proposes that the consent order funds should be distributed to thirty-one purchasers after each files an application for refund. The purchasers in both of these cases were identified by DOE audits and were allotted funds based on presumptions of injury which the DOE has utilized in past proceedings. In both cases, however, applications for refund will be accepted from purchasers not identified by the DOE audits. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: January 4, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Moore Terminal and Barge Company, Ltd. and Point Landing, Inc.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0132 and HEF-0152.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1982), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

I. Background

In accordance with the provisions of Subpart V, ERA, on October 13, 1983, filed a Petition for the Implementation of Special Refund Procedures in connection with consent orders which it entered into with Moore Terminal and Barge Co., Ltd. (Moore), and Point Landing, Inc. (Point Landing). Each of these firms was a "reseller-retailer" of "covered" products as those terms were defined in 10 CFR 212.31. Moore is located in Monroe, Louisiana; Point Landing's main office is in Harahan, Louisiana. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a consent order with DOE. Each consent order refers to the ERA's allegations of overcharges but notes that no findings of violation were made. Additionally, each consent order states that the consent order firm does not admit that it committed any such violations. A brief discussion of the other pertinent matters covered by each consent order follows.

The Moore consent order covers the period October 1, 1973, through September 30 1974. The DOE audit alleges that during that period the firm committed possible pricing violations amounting to $942,180.27 with respect to its sales of No. 2-D diesel fuel and No. 6 fuel oil. In order to settle all claims and disputes between Moore and DOE regarding the firm's sales of these refined petroleum products during the audit period, Moore and the DOE entered into the consent order on August 29, 1977. According to the Moore consent order, the firm agreed to refund $367,182.68, plus interest, directly to its customers. (*1*) Moore was, however, unsuccessful in locating three of its customers; it was therefore unable to distribute a total of $177,104.02 to them. The Moore consent order was subsequently rescinded, in part, on December 18, 1980. On February 6, 1981, Moore accepted a modification of the terms of the consent order and agreed to refund $50,000 in full settlement of the consent order. The $50,000 in consent order funds were paid to DOE on March 2, 1981, and deposited into an interest bearing escrow account for ultimate distribution by DOE.

The Point Landing consent order covers the period October 1, 1973, through November 30, 1974. The DOE audit reveals possible pricing violations amounting to $212,216.59 (*2*) with respect to sales of No. 2 diesel fuel during the audit period. In order to settle all claims and disputes between Point Landing and the DOE regarding the firm's sales of No. 2 diesel fuel during the audit period, Point Landing and DOE entered into the consent order on September 9, 1980. (*3*) According to the Point Landing consent order, the firm agreed to deposit $100,000 into an interest bearing escrow account for ultimate distribution by DOE. The consent order funds were paid in full on October 10, 1980.

This Decision concerns the distribution of the consent order funds that both Moore and Point Landing deposited into escrow accounts, plus interest which has accured on both accounts since then.

II. Proposed Refund Procedures

The basic purpose of a special refund proceeding is to make restitution for

injuries which were probably suffered as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have determined to rely in part on the information contained in the ERA audit files. This approach is warranted based upon our experience in prior Subpart V cases where all or most of the purchasers of the consent order firm's products are identified in the audit files. *see, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination with respect to the identity of the allegedly overcharged parties is possible.

During DOE's audit of Moore, three first purchasers were identified by ERA as having allegedly been overcharged. The Point Landing audit revealed that the alleged overcharges were the result of sales to 33 first purchasers. We recognize that the DOE audit files do not necessarily provide conclusive evidence as to the identity of possible refund recipients or the amounts of money that they should receive in a Subpart V proceeding. Nevertheless, it is reasonable to use the information contained in the audit files for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion* we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified by the audit. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Brown Oil Co.*, 12 DOE ¶ 85,028 (1984); *Reinhard Distributors, Inc.*, 12 DOE ¶ ——(1984). The first purchasers identified by the audits, along with the share of the settlement amount allotted to each by ERA, are listed in Appendices A and B.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether these first purchasers were actually injured or whether they passed through the alleged overcharges. We therefore propose to adopt certain presumptions in order to determine a purchaser's level of injury and thereby distribute the escrow accounts in this case. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund procedures, in this case we propose to adopt a presumption of injury with respect to small claims and a presumption of no injury with respect to spot purchasers.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Moore and Point Landing consent orders is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Moore and Point Landing and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under this presumption we propose to adopt, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, and the time period of the consent order was quite distant, we propose that the establishment of a presumption of injury for all claims of $5,000 is reasonable. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein. After analysis of the information in the record, it appears that two of Moore's customers, and thirty-one of Point Landing's customers, made small purchases of the respective consent order firms' products.

The conclusion that claimants who were spot purchasers are not entitled to refunds from consent order funds is based on the rationale that spot purchasers are presumed not to have been injured by a supplier's pricing violations. *See Office of Enforcement*, 8 DOE ¶ 82,597 (1981). As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Richards Oil Co., 12 DOE ¶ —— (December 10, 1984). The record in this proceeding reveals that one of Moore's customers, Dixie Oil of Tennessee (Dixie), made what appears to be a single large purchase of No. 2 diesel fuel oil from Moore during the consent order period. In addition, the record reveals

that one of Point Landing's customers, International Trading and Transportation (ITT), made only occasional large volume purchases of No. 2 diesel fuel from Point Landing during the consent order period, while a second Point Landing customer, Rapsilver International, Inc. (Rapsilver), made only one large purchase. We have therefore tentatively determined that these firms are spot purchasers and that the Moore consent order funds should not be distributed to Dixie, and the Point Landing funds should not be distributed to ITT and Rapsilver. We will, however, give all three of these purchasers an opportunity to present evidence to rebut this presumption and establish the extent to which each was injured as a result of its purchase of No. 2 diesel fuel oil from Moore or Point Landing during the consent order period.

On the basis of the information in the record, and after adopting a presumption of injury with respect to customers who made small purchases and a presumption of no injury with respect to spot purchasers, we propose to distribute a portion of the escrow funds to the first purchasers listed in the Appendices (with the exceptions of Dixie, ITT, and Rapsilver) in the amounts specified, plus accrued interest to date. (4) In order to actually receive a refund in either the Moore or Point Landing proceeding, each customer will still be required to file an application for refund (*see* discussion *infra*).

However, since we have no other information regarding the identity or location of the last five purchasers listed in Appendix B, we are presently unable to proceed with a distribution of refunds to them. We will contact Point Landing, in addition to publishing notice in the **Federal Register** in an effort to better identify these purchasers. We will accept information regarding the identity and present locations of these purchasers for a period of 45 days following publication in the **Federal Register** of notice of a final Decision and Order in this proceeding. (5)

In addition, we recognize, however, that there may have been other first purchasers not identified by the ERA audit, as well as downstream purchasers, who may have been injured as a result of Moore's or Point Landing's pricing practices during the respective audit periods and who would therefore be entitled to a portion of the consent order funds. If additional meritorious claims are filed, we will adjust the figures listed in the Appendices accordingly. Actual refunds will be determined only after analyzing all appropriate claims.(6) Finally, we will establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). *See also* 10 CFR 205.286(b).

In order to receive a refund, each claimant will be required either to submit a schedule of its monthly purchases from Moore, or Point Landing, or to submit a statement verifying that it purchased petroleum products from Moore, or Point Landing, during the audit period and is willing to rely on the data in the audit file. Claimants must indicate, as well, whether they have previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Purchasers not identified by the ERA audit will be required to provide specific information concerning the date, place, price and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Each applicant must also state whether there has been a change in ownership of the firm since the audit period, and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

III. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all meritorious claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

(1) The refund amount remitted to the Department of Energy by Moore Terminal and Barge Company, Ltd., pursuant to the consent order executed on August 29, 1977, will be distributed in accordance with the foregoing decision.

(2) The refund amount remitted to the Department of Energy by Point Landing, Inc., pursuant to the consent order executed on September 9, 1980, will be distributed in accordance with the foregoing decision.

Footnotes

(1) The audit file contains letters from Moore to the DOE which indicate that Moore distributed direct refunds to all but three of the purchasers covered by the consent order.

(2) The initial audit alleged pricing violations amounting to $424,432.18. Subsequent modifications and recalculations, as well as considerations of refunds previously made by Point Landing to its customers, resulted in a reduction of net alleged overcharges of $212,216.59 just prior to the execution of the consent order.

(3) The consent order resolved an outstanding proposed remedial order issued on March 31, 1978 (Case No. DRO-0028).

(4) The share of the escrow fund which the listed purchasers in Appendix A may receive represents 28.2% of the amount each was allegedly overcharged, and is consistent with the terms of the Moore consent order which settled for 28.2% of the total amount of alleged overcharges identified by the audit. The share of the escrow fund which the listed purchasers in Appendix B may receive represents 47.1% of the amount each was allegedly overcharged, and is consistent with the terms of the Point Landing consent order which settled for 47.1% of the total amount of alleged overcharges identified by the audit.

(5) If we are unable to locate these purchasers, after other meritorious claims have been disposed of, we will terminate the first stage of this refund proceeding and reserve the funds for distribution in a subsequent proceeding.

(6) Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they should receive refunds larger than those indicated in the appendices.

Appendix A.—Moore Terminal and Barge, Ltd.

First purchasers	Portion of settlement amount[1]
Dixie Oil of Tennessee, 5909 Shelby Oaks Drive, Suite 150, Memphis, TN 38134	$20,238.40
Swift Chemical Co., 3181 Woodcreek Drive, Downers Grove, IL 60515	29,636.40
Trailer Marine Transport Corp., d.b.a. Puget Sound Tug and Barge, 1045 Bond Avenue, Jacksonville, FL	125.20

[1] Includes principal and interest through March 2, 1981. Actual refunds will also include the additional interest which has accured on this amount since DOE received the Moore consent order funds on March 2, 1981.

Appendix B—Point Landing, Inc.

First purchasers	Portion of settlement amount[1]
Security Barge Line, Inc., Drawer 4927, Greenville, MS 38701	$1,256.71
Upper Miss. Towing Corp., 7703 Normandale Road, Room 110, Minneapolis, MN 55435	1,624.64
Systems Fuels, 225 Baronne Street, Post Office Box 61532, New Orleans, LA 70112	2,773.67
Canal Barge Co., Inc., 1200 Hibernia Bank Building, New Orleans, LA 70122	1,782.49

First purchasers	Portion of settlement amount [1]
Andino Chemicals Shipping Co., International Trade Mart Building, New Orleans, LA 70131	197.35
Farmers Exchange (Farmers Export Grain Elevator), Post Office Box 97, Ama, LA 70031	4,912.43
Cargill Co. (Welcome Inn Motel), Post Office Box 26568, Memphis, TN 38126	4,625.29
Cajun Marine Service, Inc., Lakeside Plaza, Lake Charles, LA 70601	29.17
Central Marine Services, Inc., 1200 Hibernia Bank Building, New Orleans, LA 70112	115.93
GAT Co., Post Office Box 4908, Jacksonville, FL 32201	66.12
Anthony Bertucci Construction,[2] Post Office Box 10063, New Orleans, LA 70121	10.01
Cliff, Jr., Inc., Post Office Box 389, Harvey, LA 70058	372.20
Six Star Towing, Post Office Box 342, Marrero, LA 70072	36.92
Frank East, Post Office Box 342, Marrero, LA 70072	42.10
Wayne, Inc., Post Office Box 342, Marrero, LA 70072	17.76
Kristensen's Petrol Co. Attn: Ken Johnson, 60 E. 42nd Street, New York, NY 10017	4,564.30
National Phosphate Co., Post Office Box 30, Hahnville, LA 70057	206.70
Triangle Transportation, Post Office Box 339, Greenville, MS 38701	222.02
R & W Marine, Inc., Foot of Jackson Street, Paducah, KY 42001	551.32
Consolidated Towing, 2320 Trumen Road, Kansas City, MO 64127	294.04
Hansen and Tideman, Inc., Sanlin Boulevard, New Orleans, LA 70150	957.51
Caribe Towing Co., 2500 Saint Nick Drive, New Orleans, LA 70114	2,585.10
Burnside Towing Co., 1330 Charmaine Avenue, Baton Rouge, LA 70806	181.73
U.S. Corps of Engineers, 210 N. 12th Street, St. Louis, MO 63101	49.95
International Trading and Transportation, 9th Floor, 321 St. Charles Avenue, New Orleans, LA 70130	60,793.11
Ajax Towing Co., 830 Dain Tower, Minneapolis, MN	50.86
Reavy Co., 300 Wade Street, Lulling, LA	66.23
Rapsilver International, Inc., Post Office Box 427, Brookshire, TX 77450	11,065.00
First purchasers with no available address:	
Louisiana Barge	161.84
Surehope Towing	60.05
Weathers Towing	20.73
Aiple Towing Co	52.09
J&S Towing	22.53

[1] Includes principal and interest through October 10, 1980. Actual refunds will also include the additional interest which has accrued on this amount since DOE received the Point Landing consent order funds on October 10, 1980.
[2] Claims under $15 will not be processed. See discussion in text.

[FR Doc. 85-2579 Filed 1-31-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2768-5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed January 21, 1985 through January 25, 1985 pursuant to 40 CFR 1506.9.

EIS No. 850036, Final MMS, NC, SC, GA, FL, 1985 South Atlantic States Outer Continental Shelf (OCS) Oil and Gas Sale No. 90, Lease Offering, Offshore the South Atlantic States, Due: March 4, 1985, Contract: Anthony Ladino (703) 285-2265.

EIS No. 850037, Draft, AFS, AZ, Bill Williams Mountain Ski Area, Management Plan, Kaibab National Forest, Coconino County, Due: April 5, 1985, Contact: R. Dennis Lund (602) 635-2681.

EIS No. 850038, DSuppl, EPA, MA, Boston Metropolitan Area WWT/Disposal Facilities Expansion, Grant, Boston Harbor, Suffolk County, Due: March 18, 1985, Contact: Robert Mendoza (617) 223-0841.

EIS No. 850039, Draft, BLM, AZ, Lower Gila South Resource Management Plan, La Paz, Maricopa, Pima, Pinal, and Yuma Cos., Due: May 4, 1985, Contact: Bill Carter (602) 863-4464.

EIS No. 850040, Final, FHW, NB, NB-370 Improvement, between Papillion and Bellevue, Sarpy County, Due: March 4, 1985, Contact: Walter Running (402) 471-5527.

Amended Notices:

EIS No. 850022, Draft, MMS, AK, 1985 North Aleutian Basin Outer Continental Shelf (OCS) Oil and Gas Sale No. 92, Leasing, Due: March 13, 1985, Published FR 1-25-85—Review extended.

EIS No. 850021, Draft, NRC, PA, Beaver Valley Power Station Unit 2, Operating License, Beaver County, Due: March 18, 1985, Published FR 1-18-85—Review reestablished.

EIS No. 840024, Draft, IBR, NM, AZ, UT, Gallup-Navajo Indian Water Supply Project, San Juan, McKinley Cos., NM, Apache Co., AZ, San Juan Co., UT, Published FR 2-3-84—WITHDRAWN.

Dated: January 29, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-2707 Filed 1-31-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2768-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 14, 1985 through January 18, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-BLM-J70000-MT, Rating LO, Garnet Resource Area, Resource Mgmt. Plan, MT. Summary: EPA believes implementation of the preferred alternative should result in improved watershed conditions. EPA requested that a water quality monitoring plan be adopted and that the FEIS contain more information on current water quality problems.

ERP No. D-COE-F90004-MI, Rating EC2, Upper Saginaw River, Dredged Material Disposal Site, Construction, Crow Island State Game Area, MI. Summary: The presence of chlorinated organic contaminants, i.e. polychlorinated biphenyls (PCB); 2, 3, 7, 8 tetrachlorodibenzo-p-dioxin (PCDD); and 2, 3, 7, 8 tetrachlorodibenzo furan (PCDF) in the dredged sediment may pose significant environmental problems. Some controversy, however, exists over what levels of PCB, PCDD and PCDF may be harmful to human health and the environment. To more fully evaluate potential project impacts, the EPA recommended additional sediment testing, including bioavailability and food chain contamination studies.

ERP No. D-COE-L32008-WA, Rating EC2, Elliott Bay Small Craft Harbor and Marina Development, Permit, WA. Summary: EPA requested that additional information be provided in the FEIS, including: (1) More complete analysis of on-site alternatives; and (2) better demonstration that the proposed mitigation is adequate to offset the adverse environmental impacts of the project.

ERP No. D-DOE-J22001-CO, Rating EC2, Durango/Vanadium Corp. Inactive Uranium and Vanadium Mill Tailing Site, Remedial Actions, Clean-up of Radioactively Contaminated Material, CO. Summary: EPA's review concurs with DOE that stabilization-in-place for inactive uranium mill tailings piles is the least preferred alternative, primarily because of the difficulty in meeting EPA's 1000 year remedial action longevity requirement. EPA requested additional information in a DEIS addendum pertaining to two relocation alternatives in order to provide the information necessary for selection of a final preferred remedial action alternative.

ERP No. D-FAA-K51030-CA, Rating EC2, John Wayne Airport, Master Plan, Expansion and Improvement, Santa Ana Heights Land Use Compatibility Program, Approval, CA. Summary: EPA

requested that the FEIS contain a commitment to implement the proposed mitigation measures due to the potential for air quality impacts.

ERP No. D–OSM–E01005–TN, Rating EC2, Tennessee Federal Program, Surface Coal Mining Operations, Comprehensive Impact Permits, TN. Summary: EPA expressed some environmental concerns and suggested that additional information and permitting strategy be provided in the FEIS on: Fugitive dust emissions, noise, acid mine drainage, protection of water supply wells, criteria for backfilling underground mines, and assessment of floodplain and wetland habitats.

Final EISs

ERP No. F–FHW–F40192–MN, Anoka County Road 116 Extension and Bridge Construction over the Rum River, MN–47 to MN–7, MN. Summary: EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. FS–FHW–L40026–ID, St. Joe River Road/ID FH–50 Improvement, Marble Creek to Avery, ID. Summary: EPA made no formal comments. Review of the FEIS Supplement was completed and the project was found satisfactory.

ERP No. F–OSM–J01063–MT, Westmoreland Resources and Absaloka Mine Operation, Permit, MT. Summary: EPA made no formal comments. EPA's concerns raised in the DEIS were satisfactorily resolved in the FEIS.

ERP No. F–SCS–G36123–OK, Campbell Creek Watershed and Flood Protection Plan, OK. Summary: The FEIS responded to EPA's comments on the DEIS and we have identified no new issues of concern regarding the project.

Dated: January 29, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–2708 Filed 1–31–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59703; FRL–2768–7]

Toxic Substances; Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to ERA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seven such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 85–7, 85–8 and 85–9—February 7, 1985.

Y 85–10, 85–11, 85–12 and 85–13—February 12, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of TSCA. The notices will contain essentially the same information but the prefixes to the specific number assigment will appear in an abbreviated form. Prefixes under the modified format will use the letters "Y" (POLYMER EXEMPTION), "P" (PMN) and "T" (TMEA). The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85–7

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Alkyd resin is converted into paint. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 85–8

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Short oil baking alkyd. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 85–9

Importer. Confidential.

Chemical. (G) Aromatic polycarbodiimide.

Use/Import. (G) Filament additive. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing and use: dermal.

Environmental Release/Disposal. No data submitted. Disposal by local exhaust ventilation.

Y 85–10

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Alkyd resin converted into paint. Prod. Range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 85–11

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Alkyd resin converted into paint. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Y 85–12

Manufacturer. Confidential.

Chemical. (G) Rosin—modified phenolic resin.

Use/Production. (S) Industrial heat set web offset and sheet—fed quickset printing inks. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure.. Manufacture: dermal and inhalation, a total of 4 workers.

Environmental Release/Disposal. Less than 0.1 kg/batch released to water with less than 4 kg/batch land. Disposal by publicly owned treatment works (POTW) and sanitary landfill.

Y 85–13

Importer. Confidential.

Chemical. (G) Polymer of aromatic diisocyanates, aliphatic diisocyanates, aliphatic glycols and aliphatic diacid.

Use/Import. (S) Industrial auxiliary for leather. Import range: Confidential.

Toxicity Data. Acute oral: Male and female >5.0 ml/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; IC_{50} (Psuedo fluorescence): >100 mg/1; 96 hrs (Brachydanio rerio): 100 mg/1.

Exposure. Processing: dermal, a total of 1 worker, up to 1–5 min/weighing, 3 weighings/da.

Environmental Release/Disposal. No release to air, water and land. Disposal by POTW or customer's own treatment plant.

Dated: January 28, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85–2561 Filed 1–31–85; 8:45 am]

BILLING CODE 6560–50–M

[OPM–4–FRL–2765–6]

Extension of Period for Preparation of Recommended Determination on Section 404(c) Proceedings To Prohibit, Deny, or Restrict the Specification, or the Use for Specification, of an Area as a Disposal Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of period for preparation of recommended determination.

February 1, 1985.

Public Notice No. IV–404004–HLM (Jack Maybank).

SUMMARY: On September 6, 1984 a public hearing was held in Charleston, South Carolina pursuant to Public Notice No. IV–404004–HLM [Jack Maybank] issued July 26, 1984, 49 FR 30112. This hearing concerned a proposed determination by EPA published in that Notice proposing to prohibit the specification of the wetland area therein described as a disposal site for dredged or fill materials under authority of section 404(c) of the Clean Water Act [33 U.S.C. 1251 *et seq.*] and EPA regulations for the implementation of section 404(c) set forth at 40 CFR Part 231. These regulations contain provisions setting time limits on the post-hearing comment period [40 CFR 231.4(f)] and on the period within which the Regional Administrator or his designee must prepare a recommended determination for forwarding to the Administrator for review [40 CFR 231.5(a)]. These time requirements may be extended, pursuant to 40 CFR 231.8, upon a showing of good cause.

As noticed in the **Federal Register** of October 12, 1984, 49 FR 40096, the post-hearing comment period was extended to October 21, 1984. To allow Mr. Maybank more time for submission of a scientific study in support of his proposed project, the post-hearing comment period was further extended to October 30, 1984, as noticed in the **Federal Register** of October 29, 1984, 49 FR 43501. This is notice that, in order to permit EPA adequate time to analyze that scientific study and to consult with Mr. Maybank on alternatives to the project, the period for preparation of the recommended determination was extended through January 23, 1985. That recommended determination has now been completed, and was forwarded by the Regional Administrator on January 18, 1985 to the Assistant Administrator for External Affairs, to whom the Regional Administrator has delegated authority for final determination.

FOR FURTHER INFORMATION CONTACT: E.T. Heinen, Chief Environmental Assessment Branch, Office of Policy and Management, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365, (404) 881–7901.

Dated: January 22, 1985.

Charles R. Jeter,

Regional Administrator, Region IV.

[FR Doc. 85–2187 Filed 1–31–85; 8:45 am]

BILLING CODE 6560–50–M

[OW–8–FRL–2769–8]

Water Pollution Control; North Dakota New Rockford Aquifer Petition for Sole Source Designation

AGENCY: Region VIII U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that a decision has been made by the Region VIII office of EPA to initiate formal sole source designation procedures for the New Rockford Aquifer in the area of Fessenden, North Dakota. (Note that a decision to initiate designation procedures differs from actual designations of an aquifer as a sole source).

FOR FURTHER INFORMATION CONTACT: Patrick A. Crotty, Chief, Ground Water Section, U.S. EPA Region VIII (8WM–DW), 1860 Lincoln Street, Denver, Colorado 80210. Phone: (303) 844–2731.

SUPPLEMENTARY INFORMATION: The Safe Drinking Water Act was enacted on December 16, 1974. Section 1424(e) of the Act states:

> If the Administrator determines on his own initiative or upon petition that an area has an aquifer which is the sole or principal drinking water source for an area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal Financial Assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

In summary, Section 1424(e) authorizes EPA to: (1) Designate sole or principal drinking water source aquifers; and (2) once a designation has been made, review Federal financially assisted projects which may contaminate a sole or principal drinking water source aquifer through a recharge zone so as to create a significant hazard to public health.

On May 5, 1984, Orval Hovey, of Fessenden, North Dakota, petitioned the Regional Administrator of Region VIII to designate the New Rockford Aquifer as the sole source of drinking water for the City of Fessenden, North Dakota, and the surrounding farms. Mr. Hovey claims that the New Rockford Aquifer, if contaminated, would create a significant hazard to public health.

On September 25, 1984, the EPA Region VIII Regional Administrator found Mr. Hovey's application to be complete, and advised him that a determination would be made as to whether or not formal designation procedures were merited.

At this time, EPA is announcing the availability of the petition and other relevant information for public review at the EPA office in Denver. EPA is also requesting public comment on the petition at this time. In particular, information is sought concerning: (1) Population dependent on the aquifer as its sole or principal source of water supply; (2) aquifer boundaries; (3) boundaries of the recharge zone of the aquifer; (4) location of water wells; and (5) alternative sources of drinking water currently in use.

EPA will hold a public hearing on Tuesday, March 5th in two sessions (10:00 a.m., and 7:00 p.m.) in the Wells County Courtroom in Fessenden, N.D. to gather further information on whether to designate the New Rockford Aquifer as a sole source aquifer. Notice of the hearing will be published in at least two newspapers of general circulation in the area of Fessenden. Notice of the hearing will also be mailed to those persons who requested such a hearing.

Comments, data, and references in response to this notice should be addressed to Mr. Crotty at the address shown above.

Dated: January 28, 1985.

Victor J. Kimm,

Director, Office of Drinking Water.

[FR Doc. 85-2633 Filed 1-31-85; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board; Members

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the SES Performance Review Board for EEOC.

FOR FURTHER INFORMATION CONTACT: Beverly A. Gary, Director, Personnel Management Services, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C., 20507, 202/634-7002.

SUPPLEMENTARY INFORMATION: Pursuant to the requirement of Section 4314(c)(1), Chapter 43, Title 5, U.S.C., membership of the SES Performance Review Board is as follows: Joseph Vasquez, Chief, Central Budget Management Branch, Office of Management and Budget (Chairperson); Eleanor Chelimsky, Director, Program Evaluation and Methodology Division, General Accounting Office; Harriet Jenkins, Assistant Administrator for Equal Opportunity Programs, National Aeronautics and Space Administration; Alan Johnson, Advisor to Under Secretary, Office of Under Secretary, Department of Education; (Alternate)

Signed at Washington, D.C., on this 29th day of January 1985.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 85-2639 Filed 1-31-85; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 78-72, Phase III]

MTS and WATS Market Structure, Phase III; Memorandum Opinion and Order

In the matter of MTS and WATS market structure, Phase III; establishment of physical connections and through routes among carriers; establishment of physical connections by carriers with non-carrier communications facilities; planning among carriers for provision of interconnected services, and emergency communications services.

Adopted: January 15, 1985.

Released: January 17, 1985.

By the Commission.

I. Introduction

1. Lexitel Corporation (Lexitel), on August 2, 1984, filed a petition with this Commission asking us to establish and chair a forum for resolving certain problems it claims to have encountered in seeking to obtain equal access interconnection with the facilities of various local exchange carriers (ECs). The Lexitel petition was joined by Teltec Savings Communications Co. (Teltec) in a separate August 2, 1984 filing, and by Allnet Communications Services, Inc. (Allnet), in an August 6, 1984 filing. Teltec and Allnet, which—like Lexitel—are IXCs,[1] generally concurred with the complaints cited by Lexitel, and with its proposed remedy.

2. On August 13, 1984, we released a Public Notice summarizing the issues raised by the petitioners and establishing a pleading cycle so that interested parties could comment on these issues and the proposed remedies. Nineteen parties filed comments, and 16 filed reply comments.[2]

3. In this Order, we find that while there may be instances in which a forum for the resolution of equal access interconnection problems would prove desirable, the specific approach proposed by petitioners has certain inadequacies. We endorse, instead, the forum approach recommended by the Exchange Carriers Standards Association (ECSA) and direct ECSA to submit to this Commission within 30 days of the release of this Order a detailed plan for implementing its proposal, which should include a clarification of certain issues related to the proposed operations of the forum approach it has recommended.

II. Background

4. The petitioners assert that in attempting to obtain equal access interconnection, they have encountered the following problems, *inter alia:*

(1) Some ECs refuse to allow pre-cutover testing of the interaction of end office software with that of an IXC.

(2) The facilities ordering process varies from EC to EC—causing delays in the implementation of network-wide IXC interconnection to EC facilities.

(3) Some ECs have abandoned balloting procedures with regard to presubscription implementation. In such cases, IXCs must often pay exorbitant prices for customer lists in order to reach potential customers during the initial, presubscription period.

(4) IXCs must order EC facilities by circuit count (rather than by minutes of use), but the ECs do not provide the appropriate traffic tables from which these determinations can be made.

(5) Where there are shortages of exchange facilities, ECs are using allocation procedures based upon the quantity of circuits ordered, which is unfair and inefficient since it promotes over-ordering of facilities.

(6) Billing and collection procedures are erratic; as a result unrequested disconnects are being encountered.

(7) Access tandems are often not available at the time the end offices are converted.

A. The Lexitel Proposal

5. In order to resolve complaints such as those cited above, Lexitel proposes that the Commission convene and chair a series of monthly Docket No. 20099-type proceedings.[3] The purpose of the meetings would be to surface complaints in an industry-wide forum and then to resolve them. The features of the Lexitel proposal, which are generally concurred in by Allnet and Teltec, are:

(1) An IXC with an operational, technical, or physical interconnection problem would notify the relevant EC, the Commission, and any interested party, in writing, of a specific complaint. This complaint should "provide sufficient information to permit meaningful analysis and resolution of

[1] In this Order, "IXC" will denote interexchange carriers generically, including AT&T, other facilities based carriers, and resellers. "OCC", will denote interexchange carriers, except AT&T, including facilities-based carriers and resellers.

[2] Comments were filed by: The Exchange Carrier Standards Association; the seven Bell Regional Holding Companies (RHCs); several independent exchange carriers; MCI; SBS; GTE Service Corp. (on behalf of the IXC, GTE Sprint); several reseller OCCs; and ARINC (filing as a user group). A list of the parties filing comments and reply comments is attached as Appendix A.

[3] By Memorandum Opinion and Order released July 5, 1974, we initiated the Docket No. 20099 proceeding, which was: "A formal investigation and hearing on the substantive provisions of all of the Bell System's tariffs offering entrance, intercity and local distribution facilities for other carriers. . . ." 47 FCC 2d 662. A major purpose of that proceeding was to determine whether certain provisions of the various Bell Operating Company (BOC) tariffs were unduly impeding the efforts of the OCCs to interconnect with the private line local distribution facilities of the BOCs. Subsequent to the release of that Order, but prior to the commencement of the formal pleading cycle, we convened a series of meetings between AT&T and the OCCs to attempt to resolve, by agreements between the parties, as many issues as possible. Thereafter, by Memorandum Opinion and Order released May 7, 1975, we accepted the parties' settlement, but authorized continuing meetings under the Commission's aegis for the resolution of technical and administrative disputes that might arise. 52 FCC 2d 727.

the problem by the exchange carrier, or the Commission if necessary." [4]

(2) The ECs and the other parties would have one week in which to respond.

(3) The Commission would schedule and chair monthly meetings of interested parties to resolve matters raised in the IXC complaints.

(4) If the matter could not be resolved in such a meeting, the Common Carrier Bureau (the "Bureau") would resolve the dispute, under delegated authority, within 30 days.

B. Positions of Parties

1. Comments

(a) *ECSA*

6. The ECSA is a trade association of exchange carriers formed to address technical and related matters affecting interconnection of services and equipment with exchange facilities. ECSA acknowledges that some of the problems cited by petitioners could occur, but does not agree that they exist to the extent the petitioners allege. ECSA also disagrees that such matters should be resolved in a general forum operating under FCC auspices. Rather, ECSA has proposed an alternative to the Docket No. 20099-type forum, which would follow these principles:

(1) Where possible, conflicts between an IXC and an individual EC should be resolved in one-to-one negotiations.

(2) Matters of a more general concern, *i.e.* those involving EC/IXC relationships that occur on a nationwide basis, should be resolved in either of two forums conducted under the sponsorship of ECSA.

(3) Any FCC presence should be limited to that of an observer and discussant.

7. More specifically, ECSA has proposed:

(1) *Governing Body:* A Carrier Liaison Committee (CLC), composed of representatives from the ECs, IXCs, users, and the FCC would be established. The CLC would sponsor and conduct industry forums in which specific problems would be resolved on a voluntary basis.

(2) *Use of Existing Exchange Carrier Forums:* IXC/EC disputes would be addressed in the following two existing BOC forums, which, ECSA claims, are already addressing many of the types of problems that Lexitel would seek to have addressed in a Docket No. 20099-type meeting:

(i) Network Operations Form (NOF)—a forum for resolving so-called provisioning problems (*i.e.*, installation, repair, and maintenence).

(ii) Interexchange Customer Service Center (ICSC)—a forum for resolving exchange access ordering problems.

(3) *Role of CLC:* The CLC, in an administrative role, would coordinate and structure the activities of the NOF and ICSC to resolve the types of problems that are of concern to Lexitel.

(4) *Subject Matter of Forums:* The subject matter of disputes referred to these forums would be limited to these categories: ordering, installation, repair, and maintenance. In addition, the matters should be nationwide in scope, rather than limited to a particular EC. The latter types of problems would be resolved bilaterally.

(5) *CLC Procedural Approach:* [5] Upon receiving written notice from an IXC, the CLC would decide whether the matter meets the subject matter criteria of (4) above and, if so, whether the matter should appear on either the NOF or ICSC agenda. If the matter does not meet the criteria, the item would presumably not be placed on either agenda, and the OCC would be so informed with the recommendation that resolution be sought with the individual EC on a one-to-one basis.

(b) *RHCs*

8. The RHCs generally perfer that disputes be settled in individual EC/IXC negotiations rather than in the meetings proposed by ECSA. Some RHCs tentatively endorse the ECSA proposal, while others essentially ignore the proposal. More specifically, the RHCs variously argue:

(1) The allegations of the petitioners are undocumented.[6]

(2) FCC intervention is not needed to motivate the BOCs to provide equal access expeditiously. It is in the economic interest of the BOCs to solve any equal access implementation problems in order to increase revenues and avoid bypass.[7]

(3) Individual IXC–EC negotiations (without FCC participation) are preferable to resolve whatever problems may exist.[8]

(4) The forum approach of the ECSA proposal should be entertained only as a last resort—when one-to-one negotiations break down. Even in those circumstances, subject matter should be restricted to matters of nationwide significance.[9]

(5) Existing carrier-sponsored forums are adequate, *i.e.* the Interchange Carrier Compatibility Forum (ICCF); NOF; ICSC; and the ECSA-sponsored T–1 subcommittee of ANSI (American National Standards Institute). With regard to T–1, its M–1 sub-committee specifically addresses inter network operations, provisioning, and maintenance.[10]

(6) The California Public Utilities Commission (CPUC) already has implemented an Access Service Liaison Committee, chaired by the CPUC, with an EC and IXC membership.[11]

(7) Many issues are not nationwide in scope. It is inappropriate to force their resolution into a forum with a nationwide membership.[12]

(8) Most of the various Lexitel complaints are related to the Modification of Final Judgment (MFJ), which provides for the reorganization of AT&T, and should be resolved by the Department of Justice and the District Court administering the decree and not the FCC.[13]

(c) *AT&T*

9. AT&T's position is similar to that of the RHCs. It does not explicitly support the ECSA proposal, but does agree that industry-initiated forums such as the ECSA/ANSI T–1 committee and the ICCF are adequate. Further, AT&T urges, these committees should be used only as a last resort—when individual negotiations breakdown—and only if the matters are nationwide in scope rather than EC-specific.

(d) Other OCCs and ARICN

10. Except for MCI, the OCCs concur with most aspects of the Lexite

[4] Lexitel does not state whether it is entertaining the possibility that the dispute could be resolved at this stage of the process without any further formal meetings.

[5] The specifics of the roles of the various participants in the deliberations of the CLC, NOF, and ICSC (*i.e.*, whether as voter, discussant, or observer) have not been stated by ECSA. ECSA proposes that these be developed by the parties during the start-up phase of its proposed program.

[6] In support of this statement, Bell South has submitted appendices to its comments which, its claims, document existing procedures for providing the type of support Lexitel claims it is not receiving.

[7] *See* Comments of Bell Atlantic, Bell South, PacTel, and U.S. West.

[8] *See* Comments of Bell Atlantic, Bell South, PacTel, Southwest Bell, and U.S. West.

[9] *See* Comments of Bell South, NYNEX, and Southwest Bell. U.S. West and Bell Atlantic do not accept the forum approach even as a last resort.

[10] *See* Comments of Bell Atlantic, NYNEX, PacTel, and Southwest Bell. The T–1 Committee of ANSI, which is sponsored by ECSA, is concerned with the general area of defining the technical characteristics of the electrical and physical interfaces between the facilities of the IXCs and ECs. Its M–1 subcommittee specifically addresses the future planning of the quantitative technical standards that apply to provisioning and maintenance. The subject matter of the M–1 subcommittee thus is similar in substance to, but different in emphasis from, that of the NOF, which has a day-to-day operational orientation. The ICCF is a BOC forum for resolving technical compatibility problems arising between ECs and IXCs.

[11] *See* PacTel Comments.

[12] *Id.*

[13] *See* NYNEX Comments.

proposal.[14] Problems related to facilities ordering and presubscription seemed to be of most general concern. GTE Service. Corp., while it essentially supports the Lexitel proposal, suggests several modifications.[15] MCI, on the other hand, rejects both the Lexitel and the ECSA proposals because they each entail a national forum procedure. MCI argues that only individual negotations are appropriate. ARINC, filing as a telecommunications user, support the Lexitel proposal.

2. Reply Comments.

11. The reply comments generally follow the positions taken in the comments with two significant exceptions. U.S. West and Bell Atlantic have changed their non-committal posture with regard to the ECSA proposal to one of explicit opposition.[16] Lexitel, on the other hand, has at least temporarily retreated from the proposal of its petition and given tentative assent to the ECSA approach.[17]

12. Lexitel indicates that it would be willing to have ECSA set up its CLC and other proposed arrangements, in order to give the ECSA proposal a trial. Lexitel states that it believes the ECSA proposal to be "a good faith effort by the exchange carriers to address the problems raised by the Petitions" and "urges ECSA to immediately establish the structure proposed in its Comments, so that interexchange carriers experiencing problems can afford the proposed Carrier Liaison Committee the Opportunity to demonstrate its capability as a problem-resolution forum." [18] In addition, Lexitel:

(1) Agrees that individual negotiations should precede the process of placing a complaint on the agenda of one of the ECSA committees (NOF and ICSC);

(2) Agrees that only national issues should be on the CLC agenda, but asks that an attempt be made to define the dividing line between national issues and regional or individual issues;

(3) Warns that the ECSA forums must be capable of rendering timely decisions; and

(4) Urges that the FCC require monthly status reports from ECSA, and be allowed to intervene (presumably in the manner originally proposed by Lexitel), should the ECSA process prove to be ineffective.

III. Discussion

13. In considering these petitions, we are presented with these substantive issues:

(1) Are the petitioners' complaints valid?

(2) If so, should they be resolved through a new mechanism that supplements conventional FCC procedures?

(3) If a new mechanism is desirable, what form should it take: That originally proposed by Lexitel, that of ECSA or some variation? In this regard, the following sub-issues must be considered: (a) The role of individual EC/IXC negotiations; (b) the use of existing EC committees; (c) the imposition of subject matter restrictions; and (d) the role of the FCC.

A. Validity of Complaints

14. As noted, a number of the ECs question the validity of petitioners' complaints. Thus ECs have generally claimed that: (a) Petitioners have not documented their complaints; (b) operational procedures of the ECs would preclude the occurence of some of the harms alleged by petitioners; and (c) most of the problems that do occur are specific to a given EC and not nationwide. As a consequence, the ECs claim, the remedy proposed by Lexitel is unnecessary. Nevertheless, ECSA and most of the ECs state that for the purpose of facilitating the transition to equal access they support a voluntary industry forum to address the types of complaints raised by petitioners.

15. We do not propose to address the merits of the various complaints raised by petitioners. While several ECs question the validity of those complaints, petitioners are not asking us to rule in their favor an any specific dispute, but to establish a forum in which such disputes may be resolved without the need for a formal Commission decision. Neither a grant nor a denial of such a request involves a decision on the merits of the underlying complaints. And in particular, the action we take today, denial of the petitions but endorsement of the alternative mechanism proposed by ECSA (*see infra* paras. 29, 30), does not require us to address, and should not be interpreted as an expression of any view on, the validity of those complaints.[19]

B. Mechanism for Resolution of Complaints

16. Several alternatives for resolving the complaints of petitioners already exist: (a) Individual negotiations between an IXC and a given EC; (b) existing EC and BellCore committees such as ICSC, NOF, and ICCF; and (c) existing FCC complaints handling mechanisms. Most of the parties agree, nevertheless, that a new mechanism could effectively supplement these and result in a more expeditious implementation of equal access.

17. It is evident that the problems described by petitioners could cause significant delays in the transition to an equal access environment and could compromise the quality of service provided by OCCs to their customers. Since we cannot, on the basis of the current records, precisely assess the frequency of occurrence of such problems or their geographical pervasiveness, it is difficult to assess the efficacy of existing complaint resolution procedures. It is evident from that record, however, that many ECs and OCCs are willing to participate in some type of forum, although there is some disagreement among the parties as to this Commission's role therein.

18. The parties supporting the ECSA proposal have agreed to institute expeditiously a mechanism for promoting the voluntary resolution of such problems that does not require our participation during the formative, pre-operational phase. During the operational phase, where the agenda items appearing before the NOF and the ICSC would be resolved on a voluntary basis, our participation (if any) would be that of observer. Similar participation in the meetings of the CLC, which sets the NOF and ICSC agendas, has also been recommended by ECSA. We find that it is consistent with out statutory responsibilities to encourage the

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[14] *See* Comments of ALLTEL, SBS, GTE, U.S. Telephone, Inc., Telesphere Network, Inc.

[15] The modifications are:

(1) The EC and IXC should first attempt to resolve a dispute in individual negotations.

(2) If the dispute is not resolved in such negotations, the matter would be submitted to any industry forum for resolution by mutual agreement. Subject matter should be limited to problems that are nationwide in scope, *e.g.*, (a) uniform presubscription formats; (b) software compatibility between EC and IXC switching equipment.

(3) If the forum cannot effectively address the subject matter of the contention, it would set up a task force to develop a recommended solution.

(4) If neither step (2) or (3) provides a resolution, the matter would be referred to the Bureau for resolution within 30 days.

[16] They thus join the position of MCI, which continues to oppose the forum approaches of petitioners, GTE, and ECSA.

[17] The remaining petitioners, Allnet and Teltec, continue their support of the original proposal.

[18] Lexitel Reply at 6.

[19] We have decided not to require petitioners, and the other parties, to submit further pleadings in order to determine with greater certainty the existence and pervasiveness of the alleged problems. We choose not to take this course because a further round of pleadings in this proceeding would unduly delay the development of a potentially effective dispute resolution mechanism and the actual resolution of IXC complaints, thereby hindering the implementation of equal access and full competition. If, as they allege, some IXCs are experiencing difficulties in the transition to equal access as the result of certain EC actions (or lack of action), there will be ample opportunity to establish the validity of the complaints and seek a remedy for them under the procedures described herein.

voluntary creation of a new mechanism that would work within the type of organizational structure proposed by ECSA.

C. Form of the New Mechanism

19. There are essentially two basic proposals for a new mechanism before us: the original Lexitel proposal and that of ECSA. In these proposals, the most significant items of contention reside in four areas: (a) The role of one-to-one negotiations between the EC and IXC; (b) the use of existing EC-sponsored forums rather than a Commission-directed Docket No. 200099-type proceeding; (c) the limitations, if any, to be imposed upon the subject matter of forum agendas; and (d) the role of the FCC in any new mechanism.

20. The major differences between the original Lexitel proposal (which is still supported by several parties) and the ECSA proposal are that the former: (a) Does not require an attempted resolution between the IXC and a specific EC before invoking the forum procedure (ECSA would impose such a requirement); (b) requires the creation of a new general forum to resolve disputes (ECSA would use existing, more specialized forums); (c) has no significant subject matter limitations (ECSA has proposed such limitations); and (d) requires the Bureau to resolve disputes within 30 days should an impasse be reached (ECSA would not use the Bureau to resolve impasses). In comparing the original Lexitel proposal with that of ECSA, we are of the view that the latter has certain significant advantages for the following reasons:

(1) Prior Individual Negotiations

21. The Lexitel proposal does not make the failure of prior individual negotiations between the EC and the IXC a condition precedent for placing a complaint on the form agenda. Given the broad spectrum of complaints cited by petitioners, and by other parties to this proceeding, we believe that the prompt resolution of complaints would be seriously impeded if the screening process of prior negotiations were bypassed. Such negotiations could lead to a complete resolution of a dispute, or at least a partial resolution, thereby narrowing the range of issues to be addressed in the forum process. We argee with ECSA that this should be a prerequisite to invoking the forum procedure.

(2) Use of Existing Committees

22. We believe that a general forum, such as that proposed by Lexitel, is not as efficacious as the two specialized forums, NOF and ICSC, proposed by ECSA. Since the majority of interconnection problems appear to lie within the subject matter addressed by these groups, such specialization should result in a more efficient resolution process—particularly if complaints have been subjected to a prior process of individual negotiations.

(3) Subject Matter Limitations

23. In the original Lexitel proposal, there were not any restrictions on the subject matter of the Docket No. 20099-type forum. In their comments, ECSA, GTE Service Co., and several ECs recommended that a forum composed of a multiplicity of ECs, IXCs, and users not be used to address complaints that are unique to one EC. The forum should, instead, be limited to matters that are national in scope—such as procedures for facilities ordering. ECSA has further proposed that the forum only consider disputes involving ordering, installation, repair, and maintenance. Specially excluded by ECSA, and by other parties, are matters related to the pricing of services, whether they be tariffed or not.

24. As a means of promoting the expeditious resolution of complaints, the specific subject matter limitations proposed by ECSA appear sensible. It is not clear at this time, however, whether one can conveniently draw a boundary between a "national" and a "local" issue, and whether there are other subject matter areas that should be added to the four listed by ECSA. Furthermore, some EC/IXC porblems that could be characterized as "regional" may be fairly significant, especially to regional IXCs. It is possible that the dispute-resolution forums proposed by ECSA could serve a constructive role in resolving such problems. Thus, although we approve of the use of subject matter limitations in principle, we remain concerned that the specific limitations proposed by ECSA may prove to be unduly restrictive in practice. We believe, therefore, that the issue of subject matter limitations should remain open and that any limitations be subject to reexamination and redefinition.[30]

(4) Limited Role of FCC

25. The matter of defining the extent, if any, of FCC participation must be evaluated with regard to four different stages of the complaint resolution process. During the start-up phase, when the procedural ground rules of the new organization are being formulated, we must evaluate the possible Commission role as observer, discussant, voting participant, or adjudicator. During the operational phase, when the various procedures have been established, and the various committees staffed, we must consider which of these several roles is appropriate in the following cases: (a) When a complaint is being evaluated by the CLC for placement on a forum agenda; (b) when an item is being considered in a forum; and (c) when an impasse is reached.

26. In striking a balance between minimizing our regulatory presence in matters that are better resolved within the private sector and, at the same time, promoting our statutory objectives, our staff shall participate only as an observer, in the start-up phase, and in the subsequent meetings of the CLC. The CLC will determine which items will appear on either the NOF or ICSC agendas, and which items will be rejected for consideration because they do not meet the criteria pertaining to national interest and subject matter. By participating, albeit in a limited fashion, in these meetings, our staff can help ensure that the agenda setting process will provide the OCCs with a full opportunity to surface their legitimate complaints. Furthermore, this level of participation is consistent with the ECSA proposal for Commission involvement.

27. Our staff will not participate in the actual complaint resolution process, which will be implemented in the working meetings of the NOF and ICSC. If the forum process results in a significant number of impasse situations, however, the value of continuing with the forum would be open to question. We shall adopt the suggestion of Lexitel that we monitor the functioning of the proposed forum process to see that the OCCs are indeed obtaining a fair hearing on their complaints and that the forum process is facilitating equal access interconnection. We shall require that the Chief, Common Carrier Bureau be provided with detailed minutes of the proceedings of the CLC, NOF, and ICSC, by the chairpersons of those bodies, on a monthly basis. If actual experience indicates that the process is not working well, we shall consider whether a different approach should be adopted.

28. With respect to impasse situations, we do not presently intend our staff to become an arbitrator of last resort during either the meetings of the CLC or those of the NOF and ICSC; nor shall we adopt the proposal of petitioners that impasse situations be resolved within 30 days by the Bureau on delegated authority. If, during the time that we are evaluating the efficacy of the forum process under actual working

[30] As an initial matter ECSA should address these concerns in its implementation plan. *See, infra* para. 30.

conditions, an IXC should be of the view that the conduct of an EC amounts to a violation of the Communications Act of 1934 as amended, our rules, or applicable tariff provisions, and our existing complaint resolution processes under Section 208 of the Communications Act provide an avenue for redress. In other situations, IXCs can petition us for declaratory rulings, rules changes, or other remedies.

IV. Conclusions

29. We endorse most aspects of the ECSA approach subject to these conditions:

(1) Clarification should be made of the manner in which the members of the Carrier Liaison Committee (CLC) participate in the determination of whether a complaint is sufficiently national in scope to be placed upon a forum agenda and whether the complaint, if accepted, belongs on the agenda of the ICSC or the NOF.

(2) An attempt should be made, during the start-up phase, to define permissible subject matter more rigorously. We are particularly concerned with: (a) The manner in which the distinction between national and local issues is drawn; and (b) whether the permissible subject matter categories proposed by ECSA (ordering and installation, repair, and maintenance) are too restrictive and should, therefore, be broadened.

(3) We will monitor the effectiveness of the ECSA processes and, if necessary, we reserve the right to reconsider the extent of Commission participation and our endorsement of these processes.

(4) Minutes of the proceedings of the CLC, and of any other working committees (such as the NOF and the ICSC) shall be transmitted in written form to the Commission on a monthly basis.

In order that the response of ECSA to the concerns which we have identified above be made a part of the public record, we accordingly direct ECSA to file with this Commission, as soon as is practical, a detailed plan for implementing its proposes.

V. Ordering Clauses

30. It is ordered That ECSA shall prepare a detailed plan for the implementation of its proposed Carrier Liaison Committee. This plan shall address the concerns stated herein and shall be submitted to this Commission as soon as is practical.

31. It is further ordered That copies of the ECSA plan shall be served on all parties participating in this proceeding.

32. It is further ordered that minutes of the proceedings of the CLC and its subcommittees be transmitted to the Commission on a monthly basis.

33. It is further ordered that the petition of Lexitel Corporation is denied.

34. It is further ordered That the Secretary shall cause this Order to be published in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Parties Filing Pleadings

	Comments	Reply comments
Aeronautical Radio, Inc	x	x
AT&T	x	x
Ameritech	x	No
Allnet	No	x
ALTEL	x	x
Bell Atlantic	x	x
Bell South	x	No
Centel	No	x
Exchange Carriers Standards Ass'n	x	x
GTE Service Corporation	x	x
Lexitel	No	x
MCI	x	No
Mid Rivers Telephone Cooperative, Inc	x	No
Mountain States; Northwest Bell; Pacific Northwest Bell (U.S. West)	x	x
NTIA	x	x
NYNEX	x	x
OPASTCO/NTCA	No	x
Pacific Bell; Nevada Bell (PacTel)	x	x
SBS	x	No
Southwest Bell	x	No
Telesphere Network, Inc	x	NO
TelTec	No	x
U.S. Telephone, Inc	x	No
U.S. Telephone System, Inc	x	No
USTA	No	x

[FR Doc. 85-1961 Filed 1-31-85; 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 October 1, 1984 through December 31, 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 December 31, 1984 is as follows:

Summary Report

Total Number of Sponsored Events: 4.

Total Number of Sponsoring Organizations: 4.

Total Number of Commissioners/Employees Attending: 8.

Total Amount of Reimbursement:	
Transportation	$2,177.00
Room	679.55
Board	248.00
Other Expenses	185.00
Total	3,289.55

Individual Event Reports Attached.

Sponsoring Organization (Name and Address): California Cable Television Association, 4341 Piedmont Avenue, Oakland, California 94611

Date of the Event: December 4-7, 1984.

Description of the Event: To participate in the Western Cable Show in Los Angeles, California.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending:

1 Senior Advisor
Office of the Chairman
1 Chief, Mass Media Bureau
1 Equal Opportunity Officer
1 Supervisory Electronics Engineer
1 Supervisory General Attorney
Mass Media Bureau.

Amount of Reimbursement:	
Transportation	$1,560.00
Room	400.00
Board	135.50
Other expenses	130.00
Total	[1] $2,225.50

[1] *Reimbursement Estimated*—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization (Name and Address): Communications Magazine, 6430 South Yosemite, Englewood, Colorado 80111.

Date of the Event: October 2-4, 1984.

Description of the Event: To speak at the Land Mobile Exposition in Orlando, Florida.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending: 1, Chief, Private Radio Bureau.

Amount of Reimbursement:

Transportation	$269
Room	150
Board	75
Other Expenses	25
Total	[1] $519

[1] *Reimbursement Estimated*—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization [Name and Address]: Association of Data Processing Service Organizations, Inc., 1300 North Seventh Street, Arlington, Virginia 22209–3899.

Date of the Event: October 15–16, 1984.

Description of the Event: To speak at the Association of Data Processing Service Organization's 61st Management Conference in Miami, Florida.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending: 1 Legal Assistant, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$230.00
Room	75.00
Board	37.50
Other Expenses	30.00
Total	[1] $372.50

[1] *Reimbursement Estimated*—travel processing not complete or Reimbursement billed, but not received.

Sponsoring Organization [Name and Address]: North American Society for Corporate Planning, Inc., One Industrial Way, Lowell, MA 01851.

Date of the Event: October 16, 1984.

Description of the Event: To be a guest speaker at a Telecommunications Workshop in Boston, Massachusetts.

Number of Commissioners Attending: 0.

Number and Title of Employees Attending: 1 Deputy Chief, Office of Plans and Policy.

Amount of Reimbursement:

Transportation	$118.00
Room	54.55
Board	
Other Expenses	
Total	[1] $172.55

[1] *Reimbursement Estimated*—travel processing not complete or Reimbursement billed, but not received.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–2680 Filed 1–31–85; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 85–14 et al.]

Samuel K. Stratemeyer et al.; Hearing Designation Order

In re Applications of:

Samuel K. Stratemeyer, Brookport, Illinois; Req: 750 kHz, 0.5 kW, D.	MM Docket No. 85–14; File No. BP–830926AJ.
Ozark Broadcasting, Inc., KJEL, Lebanon, Missouri; Has: 1080 kHz, 0.25 kW, DA–D; Req: 750 kHz, 1 kW, D.	File No. BP–831006AF.

For Construction Permit.

Adopted: January 16, 1985.

Released: January 25, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Samuel K. Stratemeyer ("Stratemeyer"),[1] and Ozark Broadcasting, Inc. ("Ozark"). Also under study are a petition for reconsideration directed at the Stratemeyer application, filed by Cox Communications, Inc. ("Cox"), and two petitions to deny, also directed at Stratemeyer, which were filed by Cox and Ozark,[2] respectively.

2. *The Cox petitions.* Cox's petition for reconsideration and petition to deny raise essentially the same arguments. Specifically, Cox seeks reconsideration of the Commission's decision to reinstate Stratemeyer's application *nunc pro tunc.* Cox contends that the Commission erred when it concluded by letter dated May 7, 1984, that the Stratemeyer application would not result in prohibited overlap with the 0.1 mV/m contour of Cox's station, WSB(AM), Atlanta, Georgia. That letter stated in pertinent part:

> A review of the instant proposal and measurement data submitted by both parties reveals that there would be no prohibitive overlap between the proposed 0.005 mV/m contour and WSB's 0.1 mV/m contour. It is noted that, up to a distance of approximately 60–70 miles, both sets of measurements data are acceptable within the guidelines of Section 73.181(d) of the Rules. It is further noted a similar conclusion of no prohibitive overlap is reached even when the applicant's measurements data at greater distances are disregarded.

Thus we concluded, upon its resubmission, that the Stratemeyer application was acceptable in that no prohibited overlap was discerned. In light of Stratemeyer's subsequent amendment to his application, there is no question but that the proposal will not cause prohibited overlap. Accordingly, Cox's petition for reconsideration and petition to deny must be denied.

3. *The Ozark petition.* In its petition to deny, Ozark contends that Stratemeyer has been dilatory in completing construction of his FM station, WRIK, in Metropolis, Illinois. Ozark speculates that, therefore, Stratemeyer may request numerous extensions in connection with his instant application. Ozark also charges that Metropolis appears to be the *de facto* city of license and that Stratemeyer is using the city of Brookport as his designated community in order to gain advantage by being the "first in the service to the city of license." Finally, the Ozark petition states that a grant of Stratemeyer's application would result in undue concentration of control, since his parents own AM and FM stations in Anna, Illinois, 42 miles from Metropolis and 47 miles from Brookport.

4. In response to Ozark's first allegation, petitioner cites no irregularities in the construction of Stratemeyer's FM station. Hence, we have no basis for questioning the applicant's abilities in this regard here. In any event, our records show that Stratemeyer has filed an application for a license for the FM radio station in Metropolis, indicating that construction is completed. As to Ozark's second contention, we no longer question an applicant's intention to serve its designated community. *Surburban Community Policy, the Berwick Doctrine and the De Facto Reallocation Policy,* 93 FCC 2d 436 (1983). Finally, the Commission also has abolished the regional concentration of control rule, formerly 73.35(b)(1), which prohibited a party from owning three broadcast stations where any two are within 100 miles of the third. *Repeal of the "Regional Concentration of Control" Provisions of the Commission's Multiple Ownership Rules,* FCC 84–156, 49 FR 19482 (May 8, 1984). Moreover, the ownership interests of a parent normally would not be attributable to a child. Accordingly, Ozark's petition to deny will be denied.

5. Except 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

[1] Stratemeyer has filed two amendments. The one dated May 18, 1984 is acceptable under § 1.65 of the Commission's Rules. In addition, good cause has been shown pursuant to § 73.3522(a)(2) of our Rules in connection with the one submitted on July 6, 1984.

[2] A motion to enlarge issues would normally be filed by the parties after designation for hearing pursuant to § 1.229 of the Commission's Rules. In this instance, however, the pleading will be considered at this stage of the proceeding because the allegations related to the alleged failure of Stratemeyer to meet our criteria governing the acceptance of proposals for filing.

designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify issues to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal 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.

6. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (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.

7. It is further ordered, That the petition for reconsideration and the petition to deny filed by Cox Communications, Inc. are denied.

8. It is further ordered, That the petition to deny filed by Ozark Broadcasting, Inc. is denied.

9. It is further ordered, That the amendments filed by Samuel K. Stratemeyer are accepted.

10. 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 shall be served to the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C.

11. It is further ordered, That to avail themselves of an opportunity to be heard, the applicants 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 Rules, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-2686 Filed 1-31-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Intent To Terminate; Barber-Blue Sea Line et al.; Approval of Agreement

Agreement No.: 202-008240.

Title: The Atlantic and Gulf-Singapore, Malaya and Thailand Conference.

Parties:

Barber-Blue Sea Line

Lykes Bros. Steamship Co., Inc.

A.P. Moller-Maersk Line

Synopsis: By letter dated December 28, 1984, the Commission was advised of the result of a telephone poll of the Atlantic and Gulf/Singapore, Malaya and Thailand Conference which unanimously agreed to terminate the agreement 15 days after the effective date of the Transpacific Westbound Rate Agreement (FMC No. 202-010689).

Dated: January 29, 1985.

By order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 85-2652 Filed 1-31-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First United Financial Services, 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 February 22, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First United Financial Services, Inc.*, Arlington Heights, Illinois; to merge with Oak Park Bancorp, Inc., Oak Park, Illinois, thereby indirectly acquiring Oak Park Trust & Savings Bank, Oak Park, Illinois, and The Dunham Bank, St. Charles, Illinois; and to merge with MPSBancorp, Inc., Mount Prospect, Illinois, thereby indirectly acquiring Mount Prospect State Bank, Mount Prospect, Illinois, and United National Bank, Arlington, Heights, Illinois.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Kentucky Southern Bancorp, Inc.*, Bowling Green, Kentucky; to acquire 100 percent of the voting shares of Citizens Bank and Trust Company, Glasgow, Kentucky.

2. *Liberty United Bancorp, Inc.*, Louisville, Kentucky; to indirectly acquire 100 percent of the voting shares of Fort Thomas-Bellevue Bank, Fort Thomas, Kentucky, through a proposed one-bank holding company, FTB Bancshares, Inc., Louisville, Kentucky, a wholly owned subsidiary of Liberty United Bancorp, Inc.

c. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First National Corporation*, Grand Forks, North Dakota; to acquire at least 80 percent of the voting shares of Northwood State Bank, Northwood, North Dakota.

Board of Governors of the Federal Reserve System, January 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-2592 Filed 1-31-85; 8:45 am]

BILLING CODE 6210-01-M

Northern Trust Corp., Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engate *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, Northern Trust Serivces, Inc., Chicago, Illinois, in the activity of providing management consulting advice to nonaffiliated bank and nonbank depository organizations.

Board of Governors of the Federal Reserve System, January 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-2592 Filed 1-31-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 25, 1985.

Public Health Service

Health Resources and Services Administration

Subject: Health Professions Student Loan and Nursing Student Loan Programs-Administrative Requirements (Forms)—Revision (0915-0044)

Respondents: Individuals; Non-profit institutions

OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Request for Reconsideration—SSA-561 Extension (0960-0063)

Respondents: Individuals

OMB Desk Officer: Robert J. Fishman

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503; ATTN: (name of OMB Desk Officer).

Dated: January 25, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-2615 Filed 1-31-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84D-0292]

Sterile Drug Products Produced by Aseptic Processing; Current Good Manufacturing Practice Draft Guideline; Notice of Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline entitled "Guideline on Sterile Drug Products Produced by Aseptic Processing." The guideline outlines certain aseptic processing practices and procedures which the agency views as acceptable for the preparation of steril drug products for human and animal use. The guideline is intended to inform interested persons of these acceptable processes to facilitate compliance with the current good manufacturing practice (CGMP) regulations and to help assure the quality of human and animal drug products.

The guideline is being made available for public comment to provide the agency with views to be considered in its development of a final guideline.

DATE: Comments on or before May 2, 1985.

ADDRESS: Requests for a copy of the draft guideline and written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Paul J. Motise, Center for Drugs and Biologics (HFN-323), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-7390.

SUPPLEMENTARY INFORMATION: The draft guideline is intended to inform interested persons of certain aseptic processing practices and procedures for the preparation of steril drug products that FDA believes constitute acceptable ways of compliance with applicable CGMP regulations. This draft guideline addresses only those areas for which FDA guidance or clarification is most frequently requested, and does not comprehensively cover all aspects of aseptic processing operations. Other aspects of aseptic processing may be

addressed in response to comments received on the draft guideline.

The agency advises that some specifications in the draft guideline are stated in U.S. customary units; e.g., the Class 100 air quality refers to a particulate quality per cubic foot of air. Because the U.S. customary units are usually employed in the practices covered by the guideline, the agency intends that the U.S. customary units, where they are designated, should be the standard. For the convenience of the user of this guideline, however, the agency intends to provide, for informational purposes, approximate metric equivalents for any specifications not stated in metric terms.

For a final guideline based on this draft guideline, the agency intends to reference, in addition to the U.S. customary units, the following metric equivalents:

1 cubic foot = 28.3 liters (L) or
= 28.3 cubic decimeter (dm3)
1 foot = 3.05 decimeters (dm) or
= 30.5 centimeters (cm)
90 feet = 274.3 decimeters (dm) or 27.4 meters
0.05 inch = 1.27 millimeters (mm)

The draft guideline is being made available for public comment before being issued as the formal position of the agency. If, following the receipt of comments, the agency concludes that the guideline reflects acceptable aseptic processing practices and procedures for the preparation of sterile drug products, the guideline will be made final and its availability will be announced in the **Federal Register** under § 10.90(b) (21 CFR 10.90(b)). That section provides for use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline is assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternate procedures even though they are not provided for in the guideline. A person who chooses to do so may discuss the matter further with the agency to prevent expenditure of money and effort for work that the agency may later determine to be unacceptable. Manufacturers are encouraged to use this opportunity to submit comments on the draft guideline if they have suggestions for its revision.

Interested persons may, on or before May 2, 1985, submit written comments on the draft guideline to the Dockets Management Branch (address above). These comments will be considered in determining whether further amendments to, or revisions of, the draft guideline are warranted. Comments should be in two copies (except that individuals may submit single copies), identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the draft guideline should be sent to the Dockets Management Branch.

Dated: January 24, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-2451 Filed 1-31-85; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPO-033-FN]

Medicaid Program; Medicaid Management Information System; System Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: In this notice, we are informing State Medicaid agencies of three new system requirements for Medicaid Management Information Systems. These systems will be required to accept:

(a) and use exclusively a uniform diagnostic coding system (the *International Classification of Disease, 9th Revision, Clinical Modification* (ICD-9-CM)), wherever diagnostic coding is used;

(b) And use exclusively a common claim form for inpatient and outpatient hospital billing (HCFA-1450); and

(c) A uniform electronic billing format for institutional billing.

The purpose of these requirements is to improve the efficiency and effectiveness of the Medicaid program; the second and third requirements will reduce the paperwork burden by implementing a single claim form and a single electronic billing format for providers to bill multiple third party payers.

EFFECTIVE DATE: These requirements will have to be implemented by January 1, 1986. However, the implementation of the three system requirements contained in this notice involve recordkeeping and/or reporting requirements. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), we have submitted a copy of this notice for review of the reporting and/or recordkeeping provisions by the Office of Management and Budget (OMB). The reporting and/or recordkeeping requirements will not be effective until OMB approval has been obtained. We will publish information in the **Federal Register** when we receive the approval. Any inquiries regarding the recordkeeping and/or reporting requirements should be directed to:

Faye Iudicello, Desk Officer, EOMB, Rm. 3001, NEOB, Washington, D.C. 20503, (202) 395-7316.

FOR FURTHER INFORMATION CONTACT: Daniel Baker, 301-594-1999.

SUPPLEMENTARY INFORMATION

Background

Section 1903(a)(3) of the Social Security Act (the Act) authorizes Federal matching funds at 75 percent for the operation of approved mechanized claims processing and information retrieval systems, which we call Medicaid Management Information Systems (MMIS). These systems are designed in accordance with basic Federal guidelines. The purpose of these systems is to provide for more efficient, economical, and effective administration of State Medicaid plans. Federal matching is available at 90 percent for expenditures for design, development, installation and improvement of an approved MMIS.

Each State Medicaid agency (with some exceptions) is required under section 1903(r) of the Act to have in place an operational and approved MMIS. In addition, section 1903(r) of the Act requires us to reduce Federal financial participation (FFP) to State Medicaid agencies that fail to met MMIS requirements for systems reapproval. A reduction in FFP in State expenditures for operating an MMIS from a total of 75 percent to 50 percent is required, on an incremental basis, if a State Medicaid agency fails to meet any MMIS performance standards or system requirements. (Performance standards establish levels of achievement an MMIS must sustain in terms of accuracy, timeliness and cost. A system requirement governs the structure and composition of an MMIS system.) In these cases, the law requires us to reduce FFP by no less than 5 percentage points, and by no more than 25 percentage points. However, we may not reduce a State Medicaid agency's FFP by more than 10 percentage points for any fiscal year. We are further required to review each State MMIS yearly to determine if it continues to meet MMIS performance standards and system requirements.

Current regulations at 42 CFR 433.115 require us to publish for public comment in the **Federal Register** any proposed changes in system requirements for

systems eligible for funding at 75 and 90 percent.

On April 19, 1983, in accordance with 42 CFR 433.115, we published a notice proposing five new system requirements (48 FR 16750). This notice, also in accordance with the provisions of § 433.115, sets forth three of these system requirements as new MMIS requirements. The use of these new system requirements will reduce the paperwork burden of providers and will improve the overall efficiency and effectiveness of the Medicaid program by providing coding, claims forms, and electronic media claims formats that are in common use by other third party payers.

All of these requirements will have to be implemented by January 1, 1986 and both 90 percent and 75 percent Federal matching are available now to meet the requirements of this notice. When we have the results of the yearly MMIS reviews conducted in fiscal year 1986, failure to meet any of these new requirements may result in reduction of enhanced FFP. However, if a State Medicaid agency cannot implement a requirement by the above deadline through no fault of its own (e.g., Medicare does not implement a requirement in that State or a contractor of the State Medicaid agency has failed to perform), it will not have its FFP reduced. The application of any reduction of FFP will depend upon the State Medicaid ageny's effort and progress toward the implementation of all requirements.

Below we discuss each system requirement, the comments we received and our responses to those comments.

In the Impact Analysis section of the proposed notice we requested comments specifically related to the cost and savings of implementation. The information received from the commenters is discussed in the Impact Analysis section of this final notice.

System Requirements

System Requirement Change I: Diagnosis Coding

A. Proposal

In our April, 1983 notice we proposed to change the current system requirement that merely requires an MMIS to have a data element in it for a diagnosis code. We proposed to require each system to (1) accept and use exclusively for diagnosis coding the *International Classification of Diseases, 9th Revision, Clinical Modification* (ICD–9–CM); (2) accept and use exclusively the full ICD–9–CM diagnosis codes, including all five digit codes; (3) accept and use exclusively ICD–9–CM on all types of claims on which diagnoses are coded; and (4) accept and use exclusively ICD–9–CM wherever the data element "diagnosis code" is currently used.

Because of the advantages of ICD–9–CM over other codes in use, HCFA and the Public Health Service jointly announced endorsement of ICD–9–CM on September 14, 1978 in a press release. Subsequently, we issued two informational memoranda to Medicaid State agencies, which recommended that they use ICD–9–CM for diagnosis coding for all services: HCFA–IM 78–58 on December 15, 1978, and HCFA–IM 79–34 on September 14, 1979. In September 1980, we issued Intermediary Letter 80–30, instructing Medicare contractors that whenever diagnosis coding is used, the full ICD–9–CM diagnosis is required. Thus, when the April 1983 notice was published, many States were already accepting, or were beginning to accept, ICD–9–CM diagnosis coding. Although many States already accepted ICD–9–CM, by implementing the ICD–9–CM as an MMIS system requirement, under the proposal we would have had more States accepting and using the same code, thereby enhancing its usefulness by encouraging its further use in connection with MMIS.

In the April 1983 notice, we stated that having a uniform diagnosis code in general, and using the ICD–9–CM code in particular, has several advantages. First, hospitals in MMIS States would be able to use a single coding system instead of using several different ones for Medicare, Medicaid, and third party payers. Second, since 95 percent of hospitals already use ICD–9–CM for one or more insurers and for their own purposes, they would no longer need to use a separate system for Medicaid, thus reducing paperwork burden. Third, ICD–9–CM is more detailed than other systems, allowing the State Medicaid agencies to make more accurate coverage and reimbursement determinations. Fourth, using a standard code would allow more State Medicaid agencies to use a "case mix" or diagnosis-related reimbursement method, which reduces the burden on the State as well as the provider through the use of an abbreviated claim and also results in fewer errors and faster payment. Finally, we believe ICD–9–CM provides a significant improvement over other disease classifications now in use in the United States.

B. Analysis and Response to Comments

We received comments from 19 commenters on this requirement. Fifteen commenters were State Medicaid agencies; four were provider associations. Six commenters had favorable or neutral comments on the diagnosis coding requirement.

Comment: Two commenters stated that we should not require the use of all five digits, especially for noninstitutional providers. Another commenter stated that in his State's experience in implementing ICD–9–CM, providers have more difficulty with billing correctly because ICD–9–CM has more digits than the system currently in use; errors have caused slower payment. The commenter thought that adequately informing States (e.g., through training) of potential problems might avoid those problems.

Response: Because of these comments and because of the need to give State Medicaid agencies more flexibility, we are modifying this requirement so that State Medicaid agencies may use as a minimum the first three digits of ICD–9–CM for coding. The three digits will result in fewer administrative costs and will be adequate for distinguishing diagnoses, although there will be less precise statiscal data. However, State Medicaid agencies that wish to use three or four instead of five digits should be aware that the prospective payment system for Medicare requires the use of all five digits in order to determine the correct diagnosis related group. State Medicaid agencies that use all five digits should take note of the difficulty the third commenter's State experienced.

Comment: Another commenter pointed out that the correct placement of the decimal point with the diagnosis code is critical. Its elimination or misplacement may produce an acceptable code that might not correctly reflect the actual diagnosis.

Response: This may be true for some Medicaid State agencies, and they should take note of this potential problem. Our system does not require a decimal point in reporting ICD–9–CM codes. We can determine the proper diagnosis without it.

Comment: Twelve commenters objected to having to use ICD–9–CM exclusively, as each State Medicaid agency is responsible for its program and must have flexibility.

Response: The majority of hospitals already use ICD–9–CM. All hospitals are required to use ICD–9–CM for Medicare and we believe that State Medicaid agencies should not require or permit them to use a different system for Medicaid.

Comment: Nine commenters requested that we clarify our rationale for the use of ICD–9–CM procedure codes for hospital billing.

Response: For hospital claims we recommend the ICD–9–CM procedure coding for inpatient services since most hospitals already use it. Most hospitals are already required by Medicare to use the ICD–9–CM procedure codes because of prospective payment; thus, it would benefit both the States and hospitals if the State Medicaid agency were not to require any other coding system for inpatient claims from a hospital using the ICD–9–CM.

Comment: Two commenters requested us to provide funding to establish training resources and to make code books available and to establish a national resource to provide updates to States.

Response: Code books and updates already are available through the Commission on Professional and Hospital Activities and the Government Printing Office. Enhanced FFP may be available to those States that submit for prior approval an advanced planning document for design, development and installation activities associated with the implementation of ICD–9–CM.

Comment: Two commenters stated that Medicare intermediaries should be required to supply ICD–9–CM coding for crossover claims; that is, Medicare claims for which the beneficiary is also eligible for Medicaid.

Response: We agree and will instruct the intermediaries to furnish ICD–9–CM codes on crossover claims.

Comment: Two commenters stated that the diagnosis coding requirements should be expanded to allow the use of codes in the third update of the Diagnostic Statistical Manual (DSM–3) (developed and published by the American Psychiatric Association) for psychiatric care and the use of specialized State codes for special purposes, such as identifying abortions, for which FFP is not available.

Response: We agree with this comment regarding the DSM–3 coding for psychiatric care, as long as the crosswalk (which matches ICD–9–CM codes to DSM–3 codes) developed by the National Institute of Mental Health is used. We do not agree that we should allow States to use specialized codes, however. To achieve the advantages already mentioned, all State Medicaid agencies must be using the same codes that Medicare contractors are already using.

C. Summary

We are adopting as a new system requirement the requirement that all MMIS systems that require diagnosis coding from providers must use only the *International Classification of Disease, 9th Revision, Clinical Modification,* for diagnosis coding, except that they may use the Diagnostic Statistical Manual (DSM–3) for psychiatric care. We require the systems to use at least the first three digits of ICD–9–CM.

System Requirement Change II: Common Hospital Billing Form

A. Proposal

In our April 1983 notice, we also proposed to add a new system requirement that would have required Medicaid State agencies in MMIS States to accept and use exclusively a common hospital billing form. The form was to be used by hospitals that furnish services to Medicaid recipients.

The form we proposed to require States to accept and use exclusively is the Uniform Bill (UB–82), HCFA–1450. This form was designed by a work group sponsored by the American Hospital Association (AHA). A previous form (UB–16), a predecessor of the current HCFA–1450, was used experimentally by both the Medicaid and Medicare programs in several States. Based on evaluation of this experiment by the National Uniform Billing Committee, that group recommended the HCFA–1450 as the standard form for hospital billing. The National Uniform Billing Committee is comprised of representatives from HCFA, the Blue Cross and Blue Shield Association, the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), representatives of State hospital associations, the Federation of American Hospitals, the AHA, the Health Care Financial Management Association, and the Health Insurance Association of America. The Secretary has approved and endorsed the use of the HCFA–1450 for both Medicare and Medicaid. We are requiring its use in the Medicare program under sections 1814(a)(1) and 1871 of the Social Security Act and intend to implement the proposed form as expeditiously as possible throughout the Medicare program. We also requested all Medicaid State agencies to accept and use the form, even if they do not have an MMIS.

We are issuing to all Medicare contractors and to our regional offices instructions that contain procedures to be used in converting to the acceptance and use of the HCFA–1450. We also proposed to issue similar instructions to Medicaid State agencies in MMIS States if the proposal were adopted. Medicare contractors were to work with the State uniform billing committees, which include hospitals and payers, concerning the printing and distribution of the form to the providers.

We stated that exclusive acceptance and use of a common form would provide several benefits. First, hospitals would experience a significant paperwork burden reduction by having one claim form that can be used to bill multiple third party payers. Second, hospitals would have to stock only one form with the various items on the form uniformly placed, providing increased efficiency and cost reductions. (Some flexibility would be permitted, however, for adding unique elements that are necessary to meet local requirements. The form itself is not to be modified; there are blank fields that can be used for these unique elements.) Third, to the extent hospitals use one form, Federal program administration savings would result by facilitating the automated transfer of information among Federal programs, such as the crossover of Medicare-Medicaid claims. Although there is now a transfer of information in many States between Medicare and Medicaid, use of the HCFA–1450 under the proposed requirement would enable more programs to use the data items on the form better and would also expedite interchange of data between the two programs for screening, utilization and other uses. Fourth, a single form would also assure compatibility of statistics between programs, which may have some beneficiaries eligible for both programs.

B. Analysis and Responses to Comments

We received comments from 24 commenters on this requirement, who consisted of five associations, one provider, and 18 State Medicaid agencies. Comments from three commenters were neutral or favorable.

Comment: Ten commenters objected to the requirement that the form be used exclusively, as it will not provide flexibility for collecting data elements unique to individual State programs and as there are many elements on the form that are not needed for Medicaid.

Response: We do not agree with this comment. State Medicaid agencies that once claimed that the form was not usable have been able to adapt it to their use by using the blank fields and adding locally defined codes. These State Medicaid agencies now have no objection to implementing the form. We will work similarly with any State Medicaid agency to resolve any problems in adopting the form to fit the agency's needs.

Comment: Two commenters stated that the notice is unclear about whether the form is to be used for outpatient hospital claims. If the form is to be used for outpatient claims, its use would

preclude paying for services on a fee-for-service basis.

Response: The HCFA–1450 must be used for hospital outpatient claims. The form will accommodate fee-for-service claims when the procedure code or codes are placed to the right of the dotted line in column 50.

Comment: Five commenters stated that the present HCFA–1450 is not electronically scannable and that the option of being able to scan it should not be precluded.

Response: We will work with State Medicaid agencies to implement electronic billing in order to eliminate the need for scanning. We will consider extending the January 1986 deadline for those State Medicaid agencies with a large volume of scannable bills that cannot easily convert to electronic billing. Our objective is to have a substantial percentage of hospital claims submitted electronically by the end of 1989.

Comment: One commenter stated that the form is hard to read because of tightly designed fields and that it is difficult to complete due to complex coding requirements.

Response: While individual providers may experience some initial difficulty with the bill, hospitals in general recommend the form because it is preferable to using multiple forms. We will keep this comment in mind, however, when considering revisions to this form.

Comment: Two commenters stated that fields for the document control number and original voucher number necessary for the MMIS have been omitted from this form.

Response: The top, right and left margins or any of the unlabeled fields of the form may be used for the document control number, original voucher number and any other additional fields.

Comment: Four commenters stated that the use of a uniform billing form is productive only if all major data elements are uniformly defined, captured, and retained; the various State Medicaid agencies will be using the blank fields for their own purposes. Without commonality, they stated, statistics will not be compatible.

Response: Although commonality of all statistics is an admirable goal, Medicare and Medicaid simply do not need all the same data. Individual State Medicaid agencies may wish to coordinate with the intermediaries in their States to achieve common usage of blank fields in order to facilitate provider use of the form. However, aside from the data in those elements common to both programs, it would be very difficult to dictate the use of the blank fields because of the varying needs of State Medicaid agencies.

Comment: One commenter stated that his State had difficulty relating the definition (or billing instruction) of some items to the needs of Medicaid and the major health insurance companies in that State.

Response: We realize that this may be a problem and we (the central office training staff) are more than willing to help State Medicaid agencies resolve it.

Comment: One commenter was concerned that the Medicaid program has not been adequately represented in the development of the HCFA–1450.

Response: The form was originally intended for Medicare only, so Medicaid was not involved at the early stages. However, the Medicaid State Advisory Group later became involved in the form's development and was actively involved when the decision was made to move from the UB–16 form to the UB–82 form. Also, the form was mailed to all State Medicaid agencies for review and comment, once as the UB–16 and once as the UB–82. Medicaid will be better represented in the future, through the Medicaid State Advisory Group.

Comment: One commenter had trouble with the fact that there is no space for listing more than two third party payers. According to regulations, all third party payers must be listed.

Response: Because of the extremely small volume of Medicaid patients who have insurance coverage from more than two third party payers, we do not believe that this problem will be a significant one. There is actually room for three third party payers, and if there are more than three third party payers, any additional ones may be placed in the "Remarks" box.

Comment: One commenter suggested that if a State Medicaid agency chooses to implement the form earlier than January 1, 1986, we should allow for decreasing FFP between the early date and January 1, 1986 if the early implementation date is not met.

Response: It is not administratively feasible to follow this suggestion, as it would entail extra time and funds to ensure compliance with early implementation. We would have to arrange to make a separate review of the system in FY 1985 to assure that the requirement is met, and we are not in a position currently to be sure that performance standards encompassing the form will be in place before June 30, 1985 (the date by which they must be published in order to be used for the review in FY 1986). In addition, we do not think it very likely that many State Medicaid agencies will agree to early implementation if they think they might be penalized by HCFA if they do not meet an early date.

Comment: One commenter objected that there was a need for more spaces for multiple provider numbers on the form; his State Medicaid agency requires an operating provider number for surgeries and a referring provider number for some patients.

Response: There is adequate space in the first box to place the referring or operating provider. If more space is needed, the information can be put in the "Remarks" box.

Comment: Two commenters stated that the use of the HCFA–1450 for outpatient services precluded reimbursement for these services from being reasonably related to the charges in the same area for similar services furnished by providers in the community (as mandated by section 1861(v)(1)(K) of the Social Security Act).

Response: Section 1861(v)(1)(K) of the Act has been implemented only with regard to physician services furnished under Medicare, and as of October 1, 1983, all physician services furnished under Medicare must be billed on the common physician claims form, the HCFA–1500. State Medicaid agencies that wish to reimburse physician services furnished in a hospital on the same basis as Medicare and that do not wish to implement the HCFA–1500 (we are not requiring the use of the HCFA–1500 at this time; see below), may correlate physician charges in various settings through the use of procedure codes on the HCFA–1450.

Comment: One commenter noted that the layout and design of the form do not appear to expedite data entry and in fact encourage errors. He referred specifically to the separation between patient information entered at the top and third party identifying data entered at the bottom.

Response: The uniform bill was designed by the AHA with input from hospitals and third party payers. In their judgment the layout and design of the form best fit the needs of all users.

C. Summary

We are adopting as a requirement that State MMIS systems accept and use exclusively the Uniform Bill (UB–82), HCFA–1450 for inpatient and outpatient services.

System Requirement Change III: Provider Electronic Billing File and Record Formats

A. Proposal

We proposed to add a new system requirement that would have required

Medicaid State agencies in MMIS States to accept and use exclusively the same record and file formats that were required by the Medicare program. (Record and file formats are the specific and uniform manner in which data are collected through an automated process.) The proposed record and file formats were to be used by Medicaid State agencies in MMIS States for bills submitted by hospitals for payment under Medicaid. These formats were developed in a joint effort by HCFA, the Blue Cross and Blue Shield Association, the Health Insurance Association of America, the AHA, and others.

Currently, MMIS approval requirements in Part 11 of the State Medicaid Manual do not specify the form in which claim data are received. We proposed to require new and continuing MMIS to be able to receive inpatient hospital claim data in the file and record formats described in the Medicare Intermediary Manual, section 3602.2ff., submitted on magnetic tape, floppy disk, diskette, cassette, or cartridge.

We stated that we expected two basic benefits from this proposed system change. First, it would be to the hospitals' advantage because they would be able to use the same formats for several payers, thus saving them a considerable amount of time and money. Second, the required uniform format, in conjunction with the required uniform bill, the HCFA–1450, would reduce paperwork and the reporting burden, in line with the Presidential initiative to eliminate excessive paperwork.

Because of the expense incurred by intermediaries and providers and because of the difficulty of implementation, the Medicare program, as of April 1, 1984, dropped its requirement that providers submit electronic claims in the prescribed format. Providers still must submit the same data as before, however.

B. Analysis and Response to Comments

We received comments (one favorable) on this requirement from 19 commenters, all of which are State Medicaid agencies.

Comment: Nine commenters stated that State Medicaid agencies should not be required to use or accept the formats exclusively. They believed they should be allowed to use varying record and file formats are long as required data items are collected and common coding conventions are used.

Response: We agree with this comment. Because of the expense and difficulty of implementation, we, as indicated above, no longer require Medicare providers to use this format when submitting electronic claims. Since the advantage of requiring the same format for both programs was to benefit Medicaid-Medicare providers by allowing them to use the same format for both programs, and we no longer require the use of the format by Medicare providers, there is no benefit to requiring Medicaid State agencies to accept only and use only these particular formats. We have decided to require only that each MMIS be able to accept the standard formats; it need not be able to accept the format exclusively nor to be able to use it within its system in place of its current formats. It must, however, accept the standard formats if providers elect to use them and it must collect all required data items and common diagnosis and procedure coding.

Comment: Four commenters stated that under the proposed requirement, providers would still be required to submit hard copy claims with electronic media claims.

Response: Providers that submit claims through electronic media need to retain supporting information in patients medical records so that the State Medicaid agency may obtain these records, if necessary. It is not necessary for the providers to submit hard copy data with the electronic media, unless requested in an individual case by the State Medicaid agency.

Comment: Five commenters thought it unreasonable to require acceptance of all the media types mentioned.

Response: We agree with this comment. We did not intend to require a State to maintain all the equipment necessary to accept *all* the media types. State Medicaid agencies must, however, accept and process magnetic tape in the standard format and any other media type requested by billers that would be cost-effective to implement.

Comment: One commenter recommended that HCFA require all providers to submit electronic claims for all cost-effective monthly volumes.

Response: We are not accepting this recommendation because we do not believe there is any way to determine what constitutes a cost-effective monthly volume. We believe it unlikely, though, that a provider with a sufficiently large volume of claims would not bill electronically.

Comment: One commenter stated that the fields for the uniform tape billing requirement for inpatient claims do not conform to those of the HCFA–1450.

Response: We do not agree with this comment. The National Uniform Billing Committee and HCFA worked together to assure that every data element on the HCFA–1450 is in the uniform electronic billing format. The space for some elements on the electronic billing format is more limited than on the form, but we have allowed sufficient space to meet all commonly-occurring circumstances.

Comment: One commenter indicated that the Medicare program does not capture certain MMIS required data elements and that the general system designs for Medicaid and Medicare must require the same elements to be truly compatible.

Response: The purpose of the required formats is not to have totally compatible data between the two programs, as not all of the information Medicaid collects is relevant to Medicare, or *vice versa.* However, the formats enable providers to use a more uniform format for tape billing.

Comment: Two commenters had difficulty with the specifications for the formats because of wasted space.

Response: Because we are no longer requiring States to accept and use the formats exclusively, any extra space should not pose a significant problem. However, we will keep this comment in mind when we consider future revisions to the billing formats.

Comment: One commenter thought that the formats (as described in the Medicare intermediary manual) should be allowed the flexibility of field definition as designated by the State uniform billing committee, not by Medicare.

Response: We do not agree with this comment. The field definitions for the uniform formats currently match the HCFA–1450; to permit State Medicaid agencies to redefine the fields would obviate the purpose for matching the field definitions for the form and the formats.

C. Summary

States' MMIS must be able to accept the same record and file formats that are required by the Medicare program, collect all required data items, and use common coding conventions. The formats need not be used exclusively nor must an MMIS be able to accept the formats in any medium in which there is not at least a small group of providers submitting claims.

System Requirement Change IV: Common Physician Claims Form and System Requirement Change V: HCFA Common Procedure Coding System

We proposed to add a new system requirement that would have required Medicaid State agencies in MMIS States to accept and use exclusively a common claim form (HCFA–1500) for noninstitutional providers. The form

was to be used by physicians and other noninstitutional providers that furnish services to Medicaid recipients.

We also proposed to add a new system requirement that would have required a State Medicaid agency with an MMIS to accept and use exclusively a common procedure coding system. The System is the HCFA Common Procedure Coding System (HCPCS). This coding system was to be used for coding procedures performed (for example, "closed reduction of ulna") and is basically used for determining reimbursement amounts.

We have decided not to impose the HCFA-1500 or the HCPCS as an MMIS requirement at this time. We believe that it will increase public understanding if we make a distinction between the requirements that relate to services provided by physicians and suppliers on a fee-for-service basis and those provided by hospitals. We will publish in the Federal Register a notice relating to the use of the HCFA-1500 and the HCPCS in State MMIS.

However, States may already have implemented the form or the coding system (or part of it) or may wish to implement one or both of them. Because of this, we are providing preliminary responses at this time to comments of general interest. The responses are unlikely to be changed in the revised requirements.

Comment: One commenter stated that the form is not compatible for EPSDT or family planning services.

Response: Field 23B of the HCFA-1500 identifies claims for EPSDT and family planning. Field 24H may also be used to identify these claims on a line-by-line basis.

Comment: Three commenters objected that the form is designed for manual entry, yet a large portion of physician claims are designed for optical character reader (OCR) entry.

Response: We will work with each State Medicaid agency using OCR to resolve problems and to develop a scannable form that resembles the standard form to the extent possible. The goal of the scannable HCFA-1500 is to ease the burden on providers and to have the same data elements and layout as the nonscannable form.

Comment: Four commenters stated that HCFA should develop a cross-reference from CPT-4 (Current Procedural Terminology—Fourth Edition) to HCPCS to assist in implementation.

Response: It is not necessary to develop a cross-reference since all of the CPT-4 is contained within HCPCS and is 100 percent compatible with Blue Cross/Blue Shield coding system. We have added coding for nonphysician services.

Comment: One commenter stated that the HCPCS adds an alpha character in the first portion of the American Dental Association (ADA) codes. They believed this to be an unnecessary disruption of an already widely recognized coding scheme.

Response: We agree and are currently negotiating with the AMA to get their agreement to eliminate the alpha prefix for dental procedures.

Comment: Three commenters were concerned with HCFA's ability to maintain HCPCS and notify States promptly of changes.

Response: We expect to update the HCPCS at least annually, and more often if necessary; we will give a future effective date to changes. State Medicaid agencies may devise local codes in the interim; however, State Medicaid agencies should notify us of these local codes. In our ongoing work with the AMA, the Health Insurance Association of America, and others involved in devising HCPCS, we will add these codes to the HCPCS if they are useful to other States as well.

Comment: It was unclear to five commenters whether HCPCS or ICD-9-CM will be used in an acute hospital setting.

Response: Medicare requires ICD-9-CM for outpatient hospital services and HCPCS for physician and supplier services furnished outside of hospitals; State Medicaid agencies may wish to duplicate those requirements. We recommend ICD-9-CM, Volume 3 for coding inpatient hospital procedures.

Comment: Four commenters stated that outside of physician services, the coding scheme is inadequate in certain areas not covered by Medicare, such as children's prosthetics and orthotics.

Response: National professional organizations have been heavily involved in the development of codes for nonphysician services to take care of this problem, and we will consider proposed additions. Where the system is still inadequate, States Medicaid Agencies may add local codes.

Comment: One commenter thought Item 10 Section B, relating to accidents, was unclear and should require a yes or no answer.

Response: If the condition was related to an accident Section B will either have a check in "auto" or "other." If this section is left blank the answer is assumed to be no.

Comment: One commenter felt that problems occur with Item 31 when processing claims for a clinic that has a number of different attending physicians; the problem is knowing which number to enter.

Response: Item 30 and/or 33 will contain the identification number of the group. The individual physicians identification numbers will be entered in Item 31. The State may also instruct the provider to annotate the physician ID. No. to relate to the service provided in item 24.

Comment: One commenter stated that presently the provider is given a choice of placing the ICD-9-CM diagnosis code or a referenced code from Item 23 in Item 24. Instructions should not allow for two methods of coding diagnosis in Item 24.

Response: The referenced code is meant only to relate the procedure in Item 24 to the diagnosis in Item 23 when the physician uses a narrative rather than coded diagnosis. Medicaid State agencies should code the narrative and enter that into their system.

General Comments

In addition to comments on specific requirements, we also received a number of general comments, which we address below.

Comment: One commenter thought we ought to require Medicare contractors, as a condition of their contracts, to use the forms and formats in their private lines of business.

Response: We have no statutory authority to require contractors to meet certain requirements in their private lines of business. However, many private insurers plan to use the forms, formats and coding systems required of Medicare contractors.

Comment: Two commenters wanted to know where to obtain the forms and who was to pay for them.

Response: In the past, HCFA supplied claim forms free of charge since they were considered single purpose forms, used only for Medicare payments. Now that some claim forms are only for Medicare payments. Now that some claim forms are used by multiple payers, HCFA is no longer required to supply them free of charge. Thus, forms HCFA-1450 and HCFA-1500 may be obtained only by commercial purchase. The State Medicaid agency may require providers to obtain their own forms and to pay for them.

Comment: Three commenters requested that we require implementation by third party payers to be synchronized with State implementation.

Response: We agree with this comment in so far as it concerns Medicare intermediaries, and we will require each Medicare intermediary to

sychronize implementation of the requirement with the State Medicaid agency. Of course, the intermediary and the State Medicaid agency will have to synchronize the implementation by January 1986.

State Medicaid agencies and intermediaries may also wish to inform any other third party payers in their service areas of their implementation plans so that they may have a more complete synchronization.

Comment: One commenter stated that we should state that "failure to meet any of these new requirements would result in reduction of FFP"; our introductory information in the proposed notice stated "failure to meet any of these new requirements would not result in reduction of FFP" and that final requirements would have to be implemented by October 1985.

Response: We agree with this comment. However, we do not plan to reduce FFP for failure to meet the system requirements before the 1986 systems performance review. If a State Medicaid agency has not implemented these requirements at the time we conduct the 1986 systems performance review, the State Medicaid agency may be subject to reduction of FFP.

Comment: One commenter felt very strongly that whenever there is a new MMIS requirement, that there should be automatic 90 percent funding for development with a very much simplified advance planning document (APD) requirement and a speedy approval. He further stated that any such APD that is disapproved should relieve the State Medicaid agency of the MMIS requirement. Another commenter stated that the APD approval process must be expedited to provide proper funding to support implementation of these new requirements.

Response: State Medicaid agencies may submit simplified APDs, but we connot provide a format for them to follow because of varying needs of various States. We and the regional offices will make every effort to approve any APD on these requirements as fast as possible. We cannot, however, waive the MMIS requirements for those State Medicaid agencies whose APDs we do not approve, since that would permit State Medicaid agencies to have the requirements waived based on an obviously unacceptable APD.

Comment: One commenter thought it imperative that we give the State Medicaid agencies timely and adequate notice of new requirements, perhaps a year.

Response: HCFA is required by regulations at 42 CFR 433.115 to allow Medicaid State agencies an appropriate period to implement new requirements, based on the requirements' complexity and other relevant factors. State Medicaid agencies are being given until January 1986 to implement the requirements.

Comment: One commenter recommended that 90 percent development funds be excluded from other program and administrative dollars when a situation involving reduction in FFP exists (i.e., the 109 percent cap for fiscal years 1982, 1983 and 1984, based on FY 1981). Some State Medicaid agencies did not include 90 percent funding in their FY 1981 budgets.

Therefore, in later years, it forces them over the 109 percent cap and causes them, in effect, to pay all State dollars for development efforts.

Response: HCFA is required by law (section 1903(t) of the Act) to include all FFP (with certain stated exceptions) in the 109 percent cap.

Comment: One commenter thought that we should not provide for waiving the reduced FFP of a State Medicaid agency that could not implement the requirements through no fault of its own.

Response: Section 1903(r)(8) of the Act requires us to waive any reduction for failure to comply with our system requirements and performance standards if the State Medicaid agency fails for good cause (however, the reduction may be waived for two quarters only) or for circumstances beyond the State Medicaid agency's control.

Regulatory Impact Statement

Introduction

Executive Order 12291 (E.O. 12291) requires that a regulatory impact analysis be performed and made available on any major rule. A "major rule" is defined as one that would result in an annual effect on the national economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity or innovation.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) requires that an initial regulatory flexibility analysis be performed and made available for each proposed rule unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. Similarly, for a final rule that has such an impact, a final regulatory flexibility analysis that responds to comments regarding the expected impact of the proposed rule on small entities must be performed and made available.

Under the RFA, small entities include small businesses, nonprofit organizations, and governmental jurisdictions of less than 50,000 in population. States are not small entities, but we treat all providers and suppliers of health care services, including individual practitioners, as small entities. Thus, a regulatory flexibility analysis is required if a substantial number of providers or suppliers would be significantly affected by a regulation.

In the proposed notice published April 19, 1983, we estimated that the one-time Federal costs for implementing the proposed system requirements would be as follows:

	Million
1. Diagnosis coding	$4.0
2. Common hospital billing form	5.0
3. Electronic billing format	2.5
4. Common physician claims form	3.0
5. HCFA common procedure coding	11.0
Total	25.5

We stated that the proposed notice did not meet the criteria for a major rule under E.O. 12291 and was not expected to result in a significant impact on a substantial number of small entities. Although we concluded that neither a preliminary regulatory impact analysis nor an initial regulatory flexibility analysis was required, we invited comments on our cost estimates and expectations of the costs and burdens imposed by the proposed requirements.

In response, many commenters asserted their belief that the costs would be far greater than we had estimated. Some commenters gave specific arguments why they believed that implementation of the system requirement as proposed could result in costs in excess of $100 million. Others gave detailed estimates of their costs of implementing particular requirements.

The comments on the proposed notice and our own subsequent analysis led us to agree that the original cost estimates understated the probable cost of the five proposed system requirements. This led us to reconsider the specific provisions of the proposed requirements, and to reexamine the practices of established State MMIS and the plans to which State Medicaid agencies were already committed. At the same time, we decided to announce the implemention of the system requirements for the common physician claims form and common procedure coding through publication of a separate notice. In addition, the projected costs of implementing the three requirements in this notice were reduced by our decisions to:

• Modify the diagnosis coding requirement to specify that a State MMIS may use only the first three digits (instead of having to use all five) of the required ICD–9–CM codes (our survey of MMIS States indicates that nearly all State Medicaid agencies already meet this requirement);

• Allow additional time to implement the common hospital billing form to State Medicaid agencies that currently process significant hospital claim workloads using optical scanning techniques; and

• Modify the electronic billing format requirement to specify only that State Medicaid agencies must be able to accept the Medicare program formats, not use them exclusively, and that they do not necessarily have to accept every medium.

Further, since the publication of the proposed notice, a number of State Medicaid agencies have informed us that they are already committed to plans to implement one or more of the proposed requirements. These State actions do not result directly from this notice. Therefore, we have not attributed their costs to this notice.

In view of the significant changes from the proposed notice that we are making in this final notice, and the resulting effect on our estimates of cost and burden, we believe that these changes do not meet the criteria for a major rule and do not have a significant economic impact on a substantial number of small entities. Nonetheless, since the costs and burden of the proposed system requirements were a major point of controversy for commenters on the proposed notice, we are voluntarily analyzing them in greater detail than the projected cost implications would usually justify.

Discussion

As discussed earlier in the preamble, we are implementing only three of the system requirements proposed in the notice published April 19, 1983. We now estimate that each of the three new MMIS system requirements imposed by this notice will result in first year implementation costs to both the Federal and State governments as follows:

	Million
1. Diagnosis coding	(1)
2. Common hospital billing form	$2
3. Electronic billing and file formats	$3
Total	5

[1] Negligible.

For the most part, these costs would be incurred in FY 1985, in order to have these requirements implemented by January 1, 1986. Thereafter, we do we expect that these requirements will produce significant additional incremental ongoing operating costs.

The principal benefits of these requirements will take the form of billing savings for providers, although State Medicaid agencies will also realize savings and other benefits in their bill processing. Increased use of electronic billing can also produce substantial savings. Since ICD–9–CM coding and the HCFA–1450 billing form are already being used or implemented by hospitals participating in Medicare, hospitals will experience, at the most, minimal start-up costs in implementing these requirements. The effect of these requirements on providers is to enable them to use the same coding, bills, and formats for Medicaid as they do for Medicare and other payers, thus achieving significant savings.

Federal and State governments will also experience savings in the form of reductions of the unit costs of processing hospital claims, as well as some reductions of workload resulting from increased uniformity of billing and coding. Once these requirements are fully implemented, beginning with January 1986, these efficiencies in hospital claims processing could result in savings of about $5 million each fiscal year, shared by State and Federal governments in the same proportion as are operating costs.

With increased electronic media claims, we expect annual claims processing savings to the State and Federal governments to more than offset the expected increase in MMIS operating costs within two years. The uniform bill will accelerate the movement towards paperless (electronic) billing. In turn, the national electronic billing and filing formats used in combination with the national uniform bill as mandated for hospital use by Medicare, Medicaid, and CHAMPUS will provide nationally standard data and codes. Thus, we expect these new system requirements to afford the opportunity for better and more consistent management of both the Medicaid and Medicare programs.

Conclusion

As noted above, implementation of these requirements is expected to result in numerous benefits to the Federal government, State Medicaid agencies, and hospitals, although first year implementation and operating costs are necessary in order to realize these benefits. In addition, increased uniformity should also benefit other health care payers. Furthermore, we believe that the improved compatibility among health programs, and the incresed sophistication and analytic power of existing information systems to assist with coverage determinations and in reimbursement for services, should also result in significant savings.

Based on this analysis, we have determined that this notice does not meet the criteria for a major rule, and the Secretary certifies that it will not result in a significant economic impact on a substantial number of small entities. Therefore, neither a regulatory impact analysis under E.O. 12291 nor a regulatory flexibility analysis under the RFA is required.

(Sec. 1102, 1902(a)(4), 1903(a)(3), 1903(r)(6), and 1903(r)(8) of the Social Security Act (42 U.S.C. 1302, 1396a(a)(4), 1396b(a)(3), 1396b(r)(6) and 1396b(r)(8); 42 CFR 433.115)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: December 18, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85–2705 Filed 1–31–85; 8:45 am]

BILLING CODE 4120–01–M

Health Resources and Services Administration

Application Announcement for Grants for Faculty Development in Family Medicine

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1985 Grants for Faculty Development in Family Medicine are being accepted under the authority of Section 786(a), Title VII, of the Public Health Service Act, as amended by Pub. L. 97–35 and extended by Pub. L. 98–619.

Section 786(a) of the Public Health Service Act authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathy, or other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, Section 786(a) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

To receive support, programs must meet the requirements of regulations at

42 CFR Part 57, Subpart Q, as amended on March 26, 1984 (49 FR 11612).

Approximately $2.0 million is expected to be available in Fiscal Year 1985 for grant awards.

The deadline date for receipt of applications is February 15, 1985.

Applications shall be considered as meeting the deadline if they are either:

1. *Received* on or before the deadline date, or

2. *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D15), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–6960.

Should additional programmatic information be required, please contact: Multidisciplinary Resources Development Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–16, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–3614.

A funding preference will be accorded approved applications for projects which emphasize increasing the number of new faculty who will be teaching on a full-time basis in family medicine.

This program is listed at 13.895 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: January 30, 1985.

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 85–2798 Filed 1–31–85; 8:45 am]

BILLING CODE 4160–16–M

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending March 31, 1985 and Rate of Insurance Premium

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that the period ending March 31, 1985, two interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 11¾ percent. Using the regulatory formula (45 CFR 126.13(a) (2) and (3)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (9.21 percent), and rounding the result (12.71 percent) upward to the nearest ⅛ percent (12¾ percent). Thus, the variable rate for this 3-month period would normally be at the annual rate of 12¾ percent (5¾ percent plus 7 percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. For the previous 3 quarters the variable interest at the annual rate was as follows: 12 percent for the quarter ending June 30, 1984; 12⅜ percent for the quarter ending September 30, 1984; and 11⅞ percent for the quarter ending December 31, 1984. Therefore, in order to maintain an average annual rate of 12 percent for the 12-month period ending March 31, 1985, the variable interest rate for the quarter ending March 31, 1985, would be at an annual rate of 11¾ percent.

2. For fixed rate loans executed during the period of January 1, 1985 through March 31, 1985, and for variable rate loans executed after January 27, 1981, the interest rate is 12¾ percent. Using the regulatory formula (42 CFR 60.13(a)(3)), in effect since January 27, 1981, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (9.21 percent; adding 3.50 percent (12.71 percent); and rounding that figure to the next higher one-eighth of 1 percent (12¾ percent).

B. Section 60.14(b) of the regulations provides that the rate of the insurance premium shall not exceed 2 percent per year of the loan principal and that the Secretary will announce the rate of the insurance premium on a quarterly basis through a notice published in the **Federal Register.**

The Secretary announces that for the period ending March 31, 1985, the rate of the insurance premium continues to be 2 percent per year of the loan principal for loans executed through the HEAL program.

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: January 26, 1985.

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 85–2595 Filed 1–31–85; 8:45 am]

BILLING CODE 4160–16

National Institutes of Health

Animal Resources Review Committee, Subcommittee on Primate Research Centers

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Subcommittee on Primate Research Centers, Animal Resources Review Committee, Division of Research Resources on February 25, 1985 and on February 26, 1985 in Conference Room F, Landow Building, 7550 Woodmont Avenue, Bethesda, Maryland 20205.

This meeting will be open to the public on February 25 from 2:00 p.m. to recess for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 25, from approximately 8:30 a.m. to 2:00 p.m. and on February 26 from 8:30 a.m. to adjournment for review, discussion, and evaluation of individual grant applications submitted to the Primate Research Centers Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Room 5B10, Building 31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–5545, will provide summaries of the meeting and rosters of the Committee members. Dr. Carl E.

Miller, Executive Secretary of the Animal Resources Review Committee, Room 5B55, Building 31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–5175, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Primate Research, National Institutes of Health)

Dated: January 18, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–2610 Filed 1–31–85; 8:45 am]

BILLING CODE 4140–01–M

National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council and Subcommittees; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council and its subcommittees on February 6 and 7, 1985, in Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public February 6 from 8:30 a.m. to 12:00 p.m. to discuss administration, management, and special reports. Attendance by the public will be limited to space available.

Meeting of the full Council and its subcommittees will be closed to the public as indicated below in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The following subcommittees will be closed to the public on February 6, 1985, from 1:00 p.m. to adjournment: Arthritis, Musculoskeletal and Skin Diseases; Diabetes, Endocrine, and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urology and Hematology. The full Council meeting will be closed to the public on February 7 from 8:30 a.m. to approximately 12:00 p.m.

The full Council meeting will then be open for the reports of the Division Directors on February 7 from approximately 1:00 p.m. to adjournment at 3:30 p.m.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Acting Executive Secretary, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, Westwood Building, Room 637, Bethesda, Maryland 20205, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIADDK, Building 31, Room 9A47, National Institutes of Health, Bethesda, Maryland 20205, (301) 496–5765.

(Catalog of Federal Domestic Assistance Program No. 13.846–849, Arthritis, Bone and Skin Diseases; Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: January 18, 1985.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 85–2609 Filed 1–31–85; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Advisory Board and Board Subcommittees; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, February 4–6, 1985, National Cancer Institute, Building 31C, Conference Room 6, 6th floor, National Institutes of Health, Bethesda, Maryland 20205. Meetings of Subcommittees of the Board will be held February 3–5 at the times and places listed below. Portions of the Board meeting and its Subcommittees will be open to the public to discuss committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portions of these meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Subcommittee on Planning and Budget will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, to discuss the preliminary 1986 Budget.

Mrs. Winifred Lumsden, the Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meetings and rosters of Board members, upon request.

Mrs. Barbara S. Bynum, Executive Secretary, National Cancer Advisory Board, National Cancer Institute, Building 31, Room 10A03, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5147) will furnish substantive program information.

Name of committee: *National Cancer Advisory Board.*

Dates of meeting: February 4–6, 1985.

Place of meeting: Building 31C, Conference Room 6, 6th floor, National Institutes of Health.

Open: February 4, 8:30 a.m.—recess. February 6, 8:30 a.m.—adjournment.

Agenda: Reports on activities of the President's Cancer Panel and the Director's Report on the National Cancer Institute; Drug Development Program at NCI; NCI Support for Information Dissemination; Subcommittee Reports and New Business.

Closed session: February 5, 8:30 a.m.—recess.

Closure reason: To review grant applications.

Name of committee: *Subcommittee on Cancer Control for the Year 2000.*

Date of meeting: February 3, 1985.

Place of meeting: Building 31, A Wing, Conference Room 11A10, National Institutes of Health.

Open: February 3, 6:00 p.m.—adjournment.

Agenda: To discuss smokeless tobacco, cancer in minorities, cancer and employment issues as well as cancer and insurance.

Name of committee: *Subcommittee on Organ Systems.*

Date of meeting: February 3, 1985.

Place of meeting: Building 31, C Wing, Conference Room 8, Sixth Floor, National Institutes of Health.

Open: February 3, 7:00 p.m.—adjournment.

Agenda: A discussion of the update of the organ systems program.

Name of committee: *Subcommittee on Innovations in Surgical Oncology.*

Date of meeting: February 3, 1985.

Place of meeting: Building 31, C Wing, Conference Room 7, Sixth Floor, National Institutes of Health.

Open: February 3, 8:00 p.m.—adjournment.

Agenda: A progress report on the surgical oncology program.

Name of committee: *Subcommittee on Cancer Information.*

Date of meeting: February 5, 1985.

Place of meeting: Building 31, C Wing, Conference Room 7, Sixth Floor, National Institutes of Health.

Open: February 5, 7:00 p.m.—adjournment.

Agenda: A discussion of the cancer information program.

Name of committee: *Subcommittee on Planning and Budget.*

Date of meeting: February 4, 1985.

Place of meeting: Building 31, A Wing, Conference Room 11A10, 11th Floor, National Institutes of Health.

Closed: February 4, 7:30 p.m.—adjournment.

Closure reason: To review the preliminary FY 86 Presidential Budget.

Name of committee: *Subcommittee on Special Actions for Grants.*

Date of meeting: February 5, 1985.

Place of meeting: Building 31, C Wing, Conference Room 6, 6th Floor, National Institutes of Health.

Closed: February 5, 8:30 a.m.—adjournment.

Closure reason: To review grant applications.

Name of committee: *Subcommittee for Review of Contracts and Budget.*

Date of meeting: February 5, 1985.

Place of meeting: Building 31, C Wing, Conference Room 7, 6th Floor, National Institutes of Health.

Open: February 5, 4:00 p.m. to adjournment.

Agenda: A concept review of the Office of the Director contracts.

(Catalog of Federal Domestic Assistance Program numbers:
13.392, project grants in cancer construction;
13.393, project grants in cancer cause and prevention;
13.394, project grants in cancer detection and diagnosis;
13.395, project grants in cancer treatment;
13.396, project grants in cancer biology;
13.397, project grants in cancer centers support;
13.398, project grants in cancer research manpower;
13.399, project grants and contracts in cancer control)

Dated: January 18, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-2614 Filed 1-31-85; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Review Committee Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for March 1985.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, Scientific Review Program, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6) Title 5 U.S. Code section 10(d) of Pub. L. 92-463, these meetings will be closed to the public for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Population Research Committee
Executive Secretary: Dr. Dinesh Sharma, Room 6C03, Landow Building, Telephone: 301, 496-1696
Date of Meeting: March 7-8, 1985
Place of Meeting: Landow Building, Conference Room A
Open: March 7, 1985, 9:00 a.m.-10:00 a.m.
Closed: March 7, 1985, 10:00 a.m.-5:00 p.m. March 8, 1985, 9:00 a.m.-adjournment.

Name of Committee: Maternal and Child Health Research Committee
Executive Secretary: Dr. Jane Showacre, Room 6C03, Landow Building, Telephone: 301, 496-1696
Date of Meeting: March 12-14, 1985
Place of Meeting: Landow Building, Conference Room A
Open: March 12, 1985, 9:00 a.m.-10:00 a.m.
Closed: March 12, 1985, 10:00 a.m.-5:00 p.m.; March 13, 1985, 9:00 a.m.-5:00 p.m.; March 14, 1985, 9:00 a.m.-adjournment (Conference Room E).

Name of Committee: Mental Retardation Research Committee
Executive Secretary: Dr. Stanley Slater, Room 6C03, Landow Building, Telephone: 301, 496-1696
Date of Meeting: March 14-15, 1985
Place of Meeting: Landow Building, Conference Room A
Open: March 14, 1985, 9:00 a.m.-10:00 a.m.
Closed: March 14, 1985, 10:00 a.m.-5:00 p.m.; March 15, 1985, 9:00 a.m.-adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: January 18, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-2613 Filed 1-31-85; 8:45 am]

BILLING CODE 4140-01-M

General Clinical Research Centers Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), February 25-26, 1985, National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20205.

The meeting will be open to the public on February 25, 1985, from 9:00 a.m. to approximately 12:00 noon during which time there will be comments by the Director, DRR; an update on the GCRC Program; and reports on the Clinical Associate Physician Program, the diffusion of the CLINFO System, possible new technologies for GCRCs, and clinical research data management. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public February 25, 1985, from approximately 12:00 p.m. to recess, and on February 26, 1985, from 8:30 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B-10, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-5545, will provide summaries of the meeting and rosters of the Committee members. Dr. Ephraim Y. Levin, Executive Secretary of the General Clinical Research Centers Review Committee, Bldg. 31, Room 5B51, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-6595, will furnish program information.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: January 18, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-2611 Filed 1-31-85; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for March 1985.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately two hours at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with provisions set forth in section 552b(c)(4) and 552(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20205 (Telephone: 301–496–7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Genetic Basis of Disease Review Committee
Executive Secretary: Ms. Linda Engel, Room 950 Westwood Building, Telephone: 301–496–7125
Dates of Meeting: March 1, 1985
Place of Meeting: Delaware Room, Holiday Inn, Bethesda, Maryland
Open: March 1, 1985, 8:30 a.m.–11:00 a.m.
Closed: March 1, 1985, 11:00 a.m.–adjournment.

Name of Committee: Minority Access to Research Careers Review Committee
Executive Secretary: Dr. Harriet Gordon, Room 949 Westwood Building, Telephone: 301–496–7585
Dates of Meeting: March 4–5, 1985
Place of Meeting: Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland
Open: March 4, 1985, 8:30 a.m.–10:30 a.m.
Closed: March 4, 1985, 10:30 a.m.–5:00 p.m., March 5, 1985, 8:30 a.m.–adjournment.

Name of Committee: Pharmacological Sciences Review Committee
Executive Secretary: Dr. Rodney Ulane, Room 952 Westwood Building, Telephone: 301–496–4772
Dates of Meeting: March 7–8, 1985
Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland
Open: March 7, 1985, 8:30 a.m.–10:30 a.m.
Closed: March 7, 1985, 10:30 a.m.–5:00 p.m., March 8, 1985, 8:30 a.m.–adjournment.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee
Executive Secretary: Dr. Helen Sunshine, Room 950 Westwood Building, Telephone: 301–496–7125
Dates of Meeting: March 11–12, 1985
Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland
Open: March 11, 1985, 8:30 a.m.–10:30 a.m.
Closed: March 11, 1985, 10:30 a.m.–5:00 p.m., March 12, 1985, 8:30 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 13–863, 13–862, 13–860, 13–859, National Institute of General Medical Sciences, National Institutes of Health)

Dated: January 18, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–2612 Filed 1–31–85; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Review of Contract Proposals and Cooperative Agreement Applications; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given for meetings of two committees of the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual contract proposals, and cooperative agreement applications. These proposals and applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals and applications the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will furnish summaries of meetings and rosters of committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Developmental Therapeutics Contracts Review Committee
Date: February 22, 1985
Place: National Institutes of Health, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20205
Time:
Open: February 22, 8:30 a.m.–9:00 a.m.
Agenda: A review of administrative details.
Closed: February 22, 9:00 a.m.–adjournment
Closure Reason: To review contract proposals.
Executive Secretary: Dr. Kendall J. Powers, Westwood Building, Room 805, National Institutes of Health, Bethesda, MD 20205, Phone: 301/496–7575.

Name of Committee: Cancer Clinical Investigation Review Committee
Date: February 25–26, 1985
Place: National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20205
Times:
Open: February 25, 8:30 a.m.–9:00 a.m.
Agenda: A review of administrative details.
Closed: February 25, 9:00 a.m.–recess, February 26, 8:30 a.m.–adjournment
Closure Reason: To review grant applications.
Executive Secretary: Dr. Richard K. Hsieh, Westwood Building, Room 819, National Institutes of Health, Bethesda, MD 20205, Phone: 301/496–7481.

Dated: January 18, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–2608 Filed 1–31–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-85-1494; FR-2074]

Section 202 Loans for Housing for the Elderly or Handicapped; Announcement of Fund Availability Fiscal Year 1985

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

ACTION: Notice of fund availability.

SUMMARY: HUD is announcing the availability of Fiscal Year 1985 loan authority under the Section 202 Housing for the Elderly or Handicapped Direct Loan Program. The loan authority will be used to provide direct Federal loans for a maximum term of 40 years under Section 202 of the Housing Act of 1959 to assist private, nonprofit corporations and consumer cooperatives in the development of housing and related facilities to serve the elderly or handicapped.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION: Notice is hereby given under Title 24 Code of Federal Regulations Part 885, that the Department of Housing and Urban Development will be accepting Applications for Fund Reservations from eligible Borrowers (see 24 CFR 885.5 for the definition of "Borrower" and other terms) for direct loans for the construction or substantial rehabilitation of housing and related facilities for dwelling use by elderly or handicapped families under the provisions of Section 202 of the Housing Act of 1959. Applications will also be accepted for loans for the acquisition, with or without moderate rehabilitation, of housing and related facilities for use as a group for the nonelderly handicapped.

The Assistant Secretary for Housing is assigning Section 202 loan fund authority for Fiscal Year 1985 to HUD Field Offices identified below in conformance with the provisions of Section 213(d) of the Housing and Community Development Act of 1974.

While the precise number of units to be funded depends upon the number of approvable applications received, the following distribution plan shows the estimated numbers of units and Fiscal Year 1985 loan authority under which applications may be funded in each Field Office jurisdiction identified below.

FISCAL YEAR 1985 SECTION 202 DISTRIBUTION PLAN BY HUD FIELD OFFICE JURISDICTION

	Estimated number of units	Estimated loan authority
Boston Regional Office:		
Boston	322	$17,903,000
Hartford	137	7,192,000
Manchester (Maine, New Hempshire, Vermont)	127	5,500,000
Providence	55	2,525,000
Total	641	33,120,000
New York Regional Office:		
Buffalo	249	10,508,000
Caribbean	202	9,150,000
Newark	354	20,072,000
New York	763	46,390,000
Total	1,568	86,120,000
Philadelphia Regional Office:		
Baltimore	100	5,250,000
Charleston	95	4,009,000
Philadelphia (Delaware)	345	17,940,000
Pittsburgh	199	9,234,000
Richmond	179	7,196,000
Washington, D.C. (portions of Maryland and Virginia)	91	4,878,000
Total	1,009	48,507,000
Atlanta Regional Office:		
Atlanta	226	9,876,000
Birmingham	218	7,564,000
Columbia	160	6,210,000
Greensboro	275	10,202,000
Jackson	165	5,742,000
Jacksonville	496	24,006,000
Louisville	186	7,664,000
Knoxville	98	3,234,000
Nashville	139	4,726,000
Total	1,983	79,224,000
Chicago Regional Office:		
Chicago	441	25,896,000
Cincinnati	85	3,850,000
Cleveland	249	10,906,000
Columbus	112	4,604,000
Detroit	227	10,760,000
Grand Rapids	133	4,748,000
Indianapolis	212	8,077,000
Milwaukee	222	8,236,000
Minneapolis/St. Paul	171	6,310,000
Total	1,852	83,377,000
Fort Worth Regional Office:		
Fort Worth (New Mexico)	262	11,056,000
Houston	136	5,317,000
Little Rock	185	5,365,000
New Orleans	175	7,578,000
Oklahoma City	156	5,054,000
San Antonio	117	4,341,000
Total	1,031	38,711,000
Kansas City Regional Office:		
Des Monies	133	4,881,000
Kansas City	205	7,011,000
Omaha	74	2,380,000
St. Louis	157	6,260,000
Total	569	20,532,000
Denver Regional Office: Denver (Montana, North Dakota, South Dakota, Utah and Wyoming)	213	9,436,000
Total	213	9,436,000
San Francisco Regional Office:		
Honolulu (Guam)	28	1,268,000
Los Angeles	632	33,875,000
Phoenix	115	4,531,000
Sacramento	89	3,666,000
San Francisco (Nevada)	309	16,716,000
Total	1,173	60,056,000

FISCAL YEAR 1985 SECTION 202 DISTRIBUTION PLAN BY HUD FIELD OFFICE JURISDICTION—Continued

	Estimated number of units	Estimated loan authority
Seattle Regional Office:		
Anchorage	20	1,074,000
Portland (Idaho)	113	4,362,000
Seattle	121	5,481,000
Total	254	10,917,000
National total	10,293	470,000,000

This distribution plan is a guide for prospective Borrowers. It estimates the loan authority that is expected to be available in each HUB Field Office jurisdiction. However, these unit and loan estimates are subject to change by Regional or Field Offices. Changes may be necessary to assure that there is enough loan authority in each Field Office to support housing projects of feasible size. Each HUD Field Office receiving Fiscal Year 1985 loan authority will publish one Invitation for Applications for Section 202 Fund Reservation (Invitation) for its jurisdiction indicating the amount of loan authority and the maximum number of units this amount is expected to assist, as well as the total number of units available for metropolitan and nonmetropolitan areas. Whether an area is "metropolitan" or "nonmetropolitan" will be determined in accordance with the redefinitions of metropolitan statistical areas announced by the Office of Management and Budget, effective June 30, 1983 (See OMB Public Affairs Issuance 83-20, June 27, 1983).

To provide equitable geographic distribution of the limited number of Section 202 units throughout a Field Office jurisdiction, Field Office may establish a maximum or minimum number of units that may be requested under any one application. This unit limitation will vary by Field Office, depending on the number of units available for either the metropolitan or nonmetropolitan category of funds. As an exception, for those prospective applicants that are proposing substantial rehabilitation, the maximum number of metropolitan or nonmetropolitan units for the State or Field Office jurisdication, as appropriate, may be the limiting factor. Applications for substantial rehabilitation may be permitted to exceed ordinarily applicable project unit limitations because the Department recognizes that some structures available for rehabilitation may contain a quantity of units in excess of this limit. Notwithstanding the above, the size

limits for projects for the chronically mentally ill and nonelderly handicapped set forth in Paragraphs (12) and (13) below, or for projects for the elderly set forth in Paragraph (14), will apply.

Priority Categories for Selection:

The purpose of the priority system for the Section 202 program is to assure that applications from localities that have been relatively underfunded over the years receive priority consideration and are treated in an equitable manner. In view of the limited funds for projects in Fiscal Year 1985, and in order to assure open competition, Field Offices will no longer suballocate funds within their jurisdiction. However, 20–25 percent of available funds will be used in nonmetropolitan areas to meet rural housing needs. Field Office Invitations will identify the total number of units available for metropolitan and for nonmetropolitan areas of the jurisdiction. Applications received for projects in metropolitan areas will compete against each other; applications received for projects in nonmetropolitan areas will similarly compete against each other. At the time of end-of-year selection determinations, the Department may transfer unused authority from Field Office that are without sufficient approvable applications to other Field Offices within the same State where there are two or more Offices that do not have sufficient authority for all approvable applications. Where a Field Office jurisdiction covers more than one State, separate metropolitan or nonmetropolitan allocation areas may be established, to the extent practicable, for each State's part of the jurisdication. Any amounts allocated to a State or to areas or communities within a State that are not likely to be used within a fiscal year will not be reallocated for use in another State unless the Department determines that other areas or communities in the same State cannot use the amounts within that same fiscal year.

In order to assure that applications are funded in the areas of greatest need, approvable applications will be divided into two categories, each of which shall have two subcategories. The categories and subcategories are as follows:

Category A—Applications for projects which will be located in localities which have previously been underfunded relative to their needs and the funding needs of other localities.

(1) Such applications which are in localities within jurisdictions having rental vacancy rates of 7 percent or less;

(2) Such applications which are in localities within jurisdictions having rental vacancy rates in excess of 7 percent.

Category B—Applications for projects which will be located in localities which have *not* been underfunded relative to their needs and the funding needs of other localities.

(1) Such applications which are in localities within jurisdictions having rental vacancy rates of 7 pecent or less;

(2) Such applications which are in localities within jurisdictions having rental vacancy rates in excess of 7 percent.

Applications shall be selected for funding first from Category A(1), second from Category A(2), third from Category B(1), and finally from Category B(2). An application in a lower subcategory which is judged clearly superior to one in the next higher subcategory, based on a minimum 5 point differential in the final rating, may be selected for funding. For example, if an application in Category B(1) has a final score of 67, and an application in Category A(2) has a score of 60, the first application may be selected over the second application. The same rule would apply if the first project were in Category A(1) and the second project in Category A(2). It would not apply to projects that are more than one subcategory apart, as for example, a project in A(1) and another project in either B(1) or B(2).

Schedule for Section 202 Inivitations, Workshops and Application Deadline

All applications for Section 202 Fund Reservations submitted by eligible Borrowers must be filed with the appropriate HUD Field Office and must contain all exhibits and additional information as required by 24 CFR 885.210.

In February 1985, HUD Field Offices will publish a one-time Invitation in newspapers of general circulation, and in minority newspapers where available, serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. No application will be accepted after the regular closing time of the appropriate Field Office on Wednesday, May 15, 1985, unless that time is extended by Notice published in the **Federal Register**. Applications that are mailed may be accepted provided they bear a postmark date and or receipt of mailing that is no later than May 15, 1985.

Organizations interested in applying for a Section 202 Fund Reservation should provide the appropriate Field Office with the name, address and telephone number of the Sponsor and Borrower organization(s), advise the Field Office whether they wish to attend the workshop described in the following paragraph, and secure the program handbood and Application Package. HUD encourages minority organizations to participate in this program as Sponsors and Borrowers.

Field Offices will conduct workshops during March 1985 to explain the Section 202 Program and the Seed Money Loan program under Section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit Section 202 eligible Borrowers to cover certain preconstruction expenses. At these workshops, Application Packages will be distributed, application procedures and requirements (including the Department's design and cost containment requirements and required exhibits) will be discussed, and local concerns such as local market conditions, building codes and zoning and housing costs will be addressed. HUD strongly recommends that prospective Borrower applications attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office Invitation. Interested handicapped persons should contact the Field Office to assure that any necessary arrangements can be made for them to be able to attend and participate in the workshop.

Additional Information

Under 24 CFR 885.205(a)(4), applicants are notified that:

(1) The Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181, approved November 30, 1983, includes amendments to Section 202 of the Housing Act of 1959 that become effective upon enactment and, therefore, apply to Section 202 projects funded under this Notice. The Department's Section 202 program is, in large part, already being administered in a manner consistent with the 1983 legislative amendments. To some extent, however, the Department's regulations at 24 CFR Part 885 require revision because they are either inconsistent with, or fail to reflect, provisions of the 1983 legislation. Such revisions will be promulgated in due course but, in their absence, the Department is giving notice as to the applicability of the legislative amendments in this document. The following provisions are involved:

Section 223(d) of the 1983 Act amended Section 202(h) to expand the beneficiary class to include handicapped persons who have an impairment described in Sections

202(d)(4) (B) and (C) and who have been released from residential health treatment facilities. The impairments involved are those that substantially impede an individual's ability to live independently and are of such nature that this ability could be improved by more suitable housing conditions.

Section 223(e) of the 1983 Act added a new provision to Section 202 specifying that, unless otherwise requested by the Sponsor, a maximum of 25 percent of the units in a project may be efficiency units, subject to a HUD determination that such units are appropriate for the elderly and handicapped population residing in the vicinity of the project or to be served by the project.

Section 223(e) of the 1983 Act also added a new provision to Section 202 prohibiting HUD from approving the prepayment or transfer of any Section 202 loan unless the prepayment or transfer is made as part of a transaction that will ensure that the project involved will continue to operate, until the maturity date of the loan, in a manner that will provide rental housing for the elderly and handicapped on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement and any other applicable loan agreements.

Section 223(e) also added a new provision specifying that the basis for selection of a contractor to be employed in the development or construction of a Section 202 project will be determined by the project Sponsor or Borrower, if any one of the following conditions is met:

(1) The development cost of the project is less than $2,000,000, (2) the project rentals will be less than 110 percent of the fair market rents applicable to Section 202 projects, or (3) the Sponsor of the project is a labor organization. This provision supersedes 24 CFR 885.416(c), which prescribes the conditions under which noncompetitive negotiated construction contracts would be awarded before the effective date of the 1983 Act. The Department is applying these criteria in its review of noncompetitive contracts.

(2) The Housing and Community Development Technical Amendments Act of 1984 (Pub. L. 98–479) approved October 17, 1984 amended Section 202(1) of the Housing Act of 1959 by adding the following new sentence: "The Secretary shall not impose different requirements or standards with respect to construction change orders, increases in loan amount to cover change orders, errors in plans and specifications, and use of contingency funds, because of the method of contractor selection used by the Sponsor or Borrower." Accordingly, the provisions of 24 CFR 885.416(C) that prohibit, with respect to negotiated noncompetitive construction contracts, approval of change orders and use of loan proceeds to pay for costs arising from inadequacies in plans and specifications are no longer in effect. Additionally, HUD Handbook 4571.1 REV–2, Chg. 1, 6–30, subparagraphs b and c and Construction Contract, Form FHA 2442A–EH, paragraph F in Article 1 will be amended to reflect the change.

(3) Departmental procedures established to implement Executive Order 12372, "Intergovernmental Review of Federal Programs," apply to this program. On June 24, 1983, HUD published regulations in the **Federal Register** (48 FR 29206) to implement the Order. The regulations replaced the intergovernmental consultation system developed under OMB Circular A–95. The Order authorizes States to establish their own process for review and comment on proposed Federal financial assistance programs. Applicants should submit their proposals to HUD. HUD will submit copies of eligible applications for Section 202 funding to the State's single point of contact for review and comment, where such applications are for construction or substantial rehabilitation of 200 or more units of housing in metropolitan areas or for 50 or more units in nonmetropolitan areas. These applications will be subject to a 60-day review period in accordance with HUD procedures under Executive Order 12372.

(4) In evaluating application for Section 202 Fund Reservations, the Department's cost containment requirements are a significant factor in the ranking process. These requirements will be set forth in a HUD Notice and will be included in the Section 202 Application Package available at the local HUD Field Office. The Section 202 workshops to be conducted by HUD Field Offices will include discussions of these and other application requirements.

(5) Religious bodies may serve as Sponsors of Section 202 projects, but the Borrower corporation must be a separate legal entity. No reference to religion or religious purposes may be included in the Articles of Incorporation or By-laws of the Borrower corporation. (The mere recital in a Borrower's Articles of Incorporation that it is organized exclusively for religious, charitable, scientific, literary or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code will not by itself make a Borrower ineligible. However, the dissolution clause must provide that, upon dissolution or winding up of the corporation, its assets remaining after payment of all debts and liabilities, shall be distributed to a nonprofit fund, foundation or corporation *other than* one created for a religious purpose, which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code.)

(6) Section 202 Borrower corporations will not be permitted to engage in any other business or activity, including the operation of any other rental project, or to incur any liability or obligation not in connection with the proposed project. The intent of this requirement is to give HUD sole claim to the assets of the Borrower corporation in case of default under the Regulatory Agreement. Accordingly, prospective applicants must have established a single-purpose Borrower corporation that is capitalized by a Sponsor in a sufficient amount to make the Borrower Acceptable to HUD from a financial standpoint.

Sponsors who have previously established separate Borrower corporations for the sole purpose of applying for a Section 202 Fund Reservation and who were not funded do not have to establish a new corporation. HUD's requirement set out in paragraph (7) below, with regard to evidence of IRS tax exemption under Section 501(c)(3) or (4), is not altered by this requirement.

(7) Sponsors, including churches, must have a current tax exemption ruling from the IRS. Where the Sponsor and Borrower are not the same, the Borrower corporation must furnish evidence that it has a tax exemption or has applied for one no later than the May 15, 1985 deadline.

(8) Only eligible Borrowers may submit Applications. The Borrower must be an eligible corporation as defined in 24 CFR 885.5 and must have been legally incorporated consistent with the requirement of paragraph (6), above, at the time it submits its Application to the HUD Field Office.

(9) Because of the nonprofit nature of the Section 202 program, no officer, or director of the Sponsor or Borrower or trustee, member, stockholder or authorized representative of the Borrower is permitted to have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever.

(10) Where the proposed project site is being optioned or acquired from a

general contractor or its affiliate, the Section 202 Borrower shall be prohibited from selecting that contractor to construct the project for which an Application for funding is being made. Further, the proposed contractor may not be the attorney, architect, housing consultant or management agent. This prohibition extend to any firm or subsidiary having an identity of interest with the contractor.

(11) In cases involving sites to be acquired from a local public body, satisfactory evidence of site control consists of evidence that the public body (a) possesses clear title to the land and (b) has entered into a legally binding commitment to convey the property to the Borrower corporation upon its receiving Section 202 funding. A mere recitation of intent to convey the land made by an official of the public body to the Borrower or preliminary actions on the part of the public body are not adequate evidence of site control.

(12) Projects designed exclusively for the chronically mentally ill are eligible under the same conditions and criteria as other projects designed solely for the nonelderly handicapped, except that (a) only group homes for up to 15 persons and independent living complexes to serve to 20 persons may be proposed for the chronically mentally ill and (b) applicants for housing for the chronically mentally ill will be required to complete a Service Program Description, describing how their proposed projects will be linked to supportive services needed to maintain chronically mentally ill persons in the community. Since funds for such services cannot be recognized in HUD's loan processing, evidence of their funding sources must be provided, with assurances that the funds will be secured by the time the project is ready for occupancy and will continue to be available for a reasonable time thereafter. Applicants are placed on notice that if at any time these supporting funds are not available, the project will have to be converted to occupancy by elderly or handicapped families capable of living independently without the supportive services.

To assist HUD in evaluating an applicant's capabilities with regard to supportive services for the residents of group homes or independent living complexes, HUD will invite a representative from the State Mental Health Authority (SMHA) to evaluate and make recommendations about the Service Program Description. To this end, prospective applicants may be required to submit a copy of the Application to the SMHA. The HUD Field Office will advise prospective applicants of further details in this regard. Since the review and evaluation is at the option of the State Mental Health Authority, HUD will conduct its own independent review for those States that do not wish to participate.

(13) Current HUD unit limits for housing for the nonelderly handicapped (other than the chronically mentally ill) permit group homes to serve up to 15 persons on one site, and independent living complexes to include up to 40 units on one site. Although up to 40 units are permitted, HUD limits independent living complexes comprised of three or more bedroom units to families. These complexes may not be developed to serve large numbers of single, unrelated persons. In an independent living complex, no more than 40 households may be served on any one site. For purposes of this requirement, a household is a family or any individual. Two unrelated individuals sharing a two bedroom unit would be counted as two households in calculating the 40 household limit.

(14) Under 24 CFR 885.215, no single Borrower may submit an Application or Applications in any HUD Region for more than 300 units. Further, with certain exceptions, reservations for projects intended primarily for the elderly will not be approved for more than 200 units. The 200-unit limitation includes the number of units of housing for the elderly already on or near the site, as well as the number of units being requested. This policy is intended to expand the number of areas in the community where the elderly can live in housing specifically designed to meet their needs. While this limitation is not intended to rule out housing for the elderly in submarket areas of major cities where housing for the elderly, either privately or publicly financed, already exists, it is designed to discourage additional housing for the elderly in proximity to existing privately or publicly financed facilities where the new units would result in a concentration of over 200 units. Accordingly, the Field Office Manager may waive the requirement where, in a given area or locality, there are no other suitable sites available for housing for the elderly.

(15) On November 18, 1982, an Interim Rule, effective on that date, was published in the **Federal Register** (47 FR 51565) to allow Section 202 loans for the acquisition of existing housing and related facilities, with or without moderate rehabilitation, but only for group homes for the nonelderly handicapped (hereinafter referred to as "acquisitions"). Borrowers should be aware that up to 350 acquisition units may be selected for Fund Reservations this fiscal year, but that no Regional Office will be permitted to recommend more than 35 units involving acquisitions to Headquarters for funding in FY 1985. However, if fewer than 350 acquisition units in total are recommended to Headquarters, additional acquisition units may be (but will not be required to be) selected from among the Regional Offices' back-up selections, and may result in more than 35 acquisition units being approved within some Regions.

Sponsors and Borrowers should note that proposals (often referred to as "refinancing") involving housing units they already own and operate as group homes for the handicapped at the time Applications are submitted are not eligible for the Section 202 program.

(16) To be considered responsive to the Invitation, an Application must not request more units than advertised for the respective metropolitan or nonmetropolitan areas designated in the Invitation, and must not exceed any maximum number of units per Application that may be established by the local Field Office.

(17) Although the Borrower may elect to use a housing consultant, the Borrower should be careful to select a consultant who is knowledgable about the Section 202 program. Failure to meet program requirements will be a cause for rejection of the application, whether or not a housing consultant is used by the Borrower. Borrowers may wish to contact previous Borrowers who have used the consultant under consideration in order to make a determination as to the consultant's qualifications.

(18) HUD will make contract authority and budget authority under Section 8 of the United States Housing Act of 1937 available for successful Borrowers, subject to the availability of funds.

(19) A notice of approval will be sent to successful Borrowers selected in accordance with the requirements of 24 CFR 885.220 (Review of Application for Fund Reservation) and on the basis of the information furnished by the Borrowers as set forth in the Field Office's Application Package.

(20) Applicants who submitted Applications that were not funded in previous fiscal years will have to reapply under this fiscal year's Field Office Invitations.

(21) 24 CFR 885.410(j) contains a minimum capital investment requirement for Section 202 Borrowers. This requirement applies to all Section

202 Borrowers receiving HUD Field Office approval of an Application for a Section 202 Fund Reservation (under § 885.400). The minimum capital investment (currently established at one-half of 1 percent (0.5%) of the total HUD-approved mortage amount, not to exceed $10,000) will apply to all Section 202 projects receiving Fund Reservations in Fiscal Year 1985. Section 106(b) Seed Money Loan Funds, under 24 CFR Part 271, may not be used to satisfy the minimum capital investment requirement.

(22) To the extent that funds are available to fund new projects from the Headquarters Reserve (which Reserve shall constitute no more than 15 percent of the total Section 202 loan authority available for Fiscal Year 1985), applications which are otherwise approvable but not funded by the Regional Offices from the field allocation may be considered for Headquarters funding, provided they meet at least one of the conditions set forth in Section 213(d)(4) of the Housing and Community Development Act of 1974, as amended:

(A) Unforeseeable housing needs, especially those brought on by natural disasters or special relocation requirements;

(B) Support for the needs of the handicapped or for minority enterprise;

(C) Providing for assisted housing as a result of the settlement of litigations;

(D) Small research and demonstration projects;

(E) Lower-income housing needs described in housing assistance plans, including activities carried out under areawide housing opportunity plans; and

(F) Innovative housing programs or alternative methods for meeting lower-income housing needs approved by the Secretary.

No one of the foregoing eligibility criteria will carry greater weight than others in making final selections.

Borrowers are invited to submit applications for Section 202 Fund Reservations in accordance with this Notice and with 24 CFR Part 885, as modified by paragraph (1) and (2) of this Notice. Additional information regarding the Section 202 program may be found in 24 CFR Part 885.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–20), the information collection requirements contained in these Section 202 application requirements have been approved by the Office of Management and Budget and have been assigned OMB control number 2502–0267.

The Catalog of Federal Domestic Assistance Program title and number is 14.157, Housing for the Elderly or Handicapped.

(Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q), Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated January 18, 1985.

Maurice L. Barksdale,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 85–2602 Filed 1–31–85; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Anchorage District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of January 28, 1985 Meeting.

SUMMARY: The meeting of the Anchorage District Advisory Council scheduled for January 28, 1985 (49 FR 48999, December 17, 1984) has been indefinitely postponed. Council members were to review the report of an interagency work group on federal recreation fee regulations. That work group's deadline has been postponed thereby making the council meeting unnecessary at this time.

Wayne A. Boden,

District Manager.

[FR Doc. 85–2671 Filed 1–31–85; 8:45 am]

BILLING CODE 4310–JA–M

[AA–6698–B]

Alaska Native Claims Selection; Salamatof Native Association, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Salamatof Native Association, Inc., notice of which was published on October 31, 1984, in the **Federal Register**, Vol. 49, No. 212, Page 43804, is modified. The decision is modified by correcting a portion of the land description within Sec. 11, T. 7 N., R. 11 W., Seward Meridian, Alaska, and deleting an easement in T. 7 N., R. 12 W., Seward Meridian, Alaska.

Any party, known or unknown, who may claim a property interest which is adversely affected by the decision shall have until March 4, 1985 to file an appeal on the issue in the modified decision. 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 office identified below, 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, shall be deemed to have waived their rights.

Copies of the modified decision can be obtained by contacting the Bureau of Land Management, Alaska State Office, Division of Conveyance Management (960), 701 C Street, Box 13, Anchorage, Alaska 99513.

Except as modified, the decision published October 31, 1984, stands as written.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–2648 Filed 1–31–85; 8:45 am]

BILLING CODE 4310–JA–M

[F–14857–A]

Alaska Native Claims Selection; Gwitchyaazhee, 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 of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611 (1976), will be issued to Gwitchyaazhee, Corporation, for approximately 38 acres. The lands involved are within Lots 1, 2, and 4, U.S. Survey No. 7161.

Upon issuance, the DIC will be published once a week, for four (4) consecutive weeks, in the *Tundra Times*. 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 March 4, 1985 to file and appeal. However, parties receiving service by certified mail shall

have 30 days from the date of receipt to file and appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing and 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.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-2645 Filed 1-31-85; 8:45 am]

BILLING CODE 4310-JA-M

[F-14913-B]

Alaska Native Claims Selection; Gana-a 'Yoo, Limited

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 of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611 (1976), will be issued to Gana-a 'Yoo, Limited, for approximately 912 acres. The lands involved are within T. 10 S., R. 3 E., Kateel River Meridian, Alaska.

Upon issuance, the DIC will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. 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 March 4, 1985 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.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-2646 Filed 1-31-85; 8:45 am]

BILLING CODE 4310-JA-M

[E-14955-B]

Alaska Native Claims Selection; Wales Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Wales Native Corporation, notice of which was published in the **Federal Register**, September 5, 1980, on pages 58976 to 58979, is modified.

Upon issuance, the modified DIC will be published once a week, for four (4) consecutive weeks, in the NOME NUGGET. Copies of the modified DIC can be obtained by contacting 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 March 4, 1985 to file an appeal on the issue in the modified DIC. 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.

Except as modified, the decision, notice of which was given September 5, 1980, stands as written.

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-2647 Filed 1-31-85; 8:45 am]

BILLING CODE 4310-JA-M

Salem District Advisory Council; Meeting

Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Salem District Advisory Council will be held February 25, 1985, at 1 p.m. at the BLM Salem District Office, 1717 Fabry Road SE., Salem, Oregon.

Agenda for the meeting will include:

1—Election of officers
2—Table Rock Wilderness Area scoping
3—Federal Timber Contract payment modification Act briefing
4—Herbicide alternatives
5—Recreation site maintenance
6—Oral statements from the public.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97302, by February 21, 1985. Written comments will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: January 17, 1985.

Joseph C. Dose,

District Manager.

[FR Doc. 85-2594 Filed 1-31-85; 8:45 am]

BILLING CODE 4310-33-M

Nevada; Filing of Plats of Survey and Order Providing for Opening of Lands

1. The Plat of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on March 15, 1985.

Mount Diablo Meridian

T. 38½ N., R. 62 E.

2. The land within the above township ranges from about 5,800 to 7,300 ft. above sea level and is mountainous in character. The soil varies from sandy clay to rocky. Undergrowth consists of sagebrush and native grasses.

Principal users of the area are cattlemen. Access into the township is provided by trail roads. No mineral formations of consequence were noted during the survey.

3. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described above are hereby open to such applications and petitions as may be permitted. All such valid applications received at or prior to 10:00 a.m. on March 15, 1985, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing. The lands described above have been open and continue to be open to the mining and mineral leasing laws.

4. The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada, effective at 10:00 a.m., on the dates indicated.

Mount Diablo Meridian	Date filed
T. 27 N., R. 34 E. (Supplemental Plat)	Sept. 19, 1984.
T. 41 N., R. 48 E. (Resurvey of tract 37)	Do.
T. 47 N., R. 63 E. (Dependent Resurvey)	Do.
T. 47 N., R. 66 E. (Dependent Resurvey)	Do.
T. 20 S., R. 60 E. (Supplemental Plat)	Do.
T. 20 N., R. 20 E. (Supplemental Plat)	Dec. 27, 1984.
T. 18 S., R. 59 E. (Dependent Resurvey)	Do.
T. 38 N., R. 61 E. (Dependent Resurvey)	Jan. 10, 1985.

Mount Diablo Meridian	Date filed
T. 38 N., R. 62 E. (Dependent Resurvey)...	Do.

5. The purpose of this notice is to inform the public and interested State and local government officials of the filing of plats of survey. Inquiries concerning the surveys shall be addressed to the Nevada State Office, Bureau of Land Management, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520.

Wm. J. Malencik,

Deputy State Director, Operations.

[FR Doc. 85-2672 Filed 1-31-85; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Chesapeake & Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesepeake and Ohio Canal National Historical Park Commission will be held Saturday, March 2, 1985, at 1 p.m. at the Fish Market Restaurant (Fireplace Room), 1054-31st Street NW., Georgetown, D.C.

The Commission was established by *Pub. L. 91-664* to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Miss Carrie Johnson, Chairman, Arlington, Virginia
Mr. Carl L. Shipley, Washington, D.C.
Ms. Polly Bloedorn, Bethesda, Maryland
Mr. James B. Coulter, Annapolis, Maryland
Mrs. Constance Lieder, Baltimore, Maryland
Mr. William H. Ansel, Jr., Romney, West Virginia
Mr. Silas Starry, Shepherdstown, West Virginia
Ms. Bonnie Troxell, Cumberland, Maryland
Mr. John D. Millar, Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, D.C.
Mr. Barry Passett, Washington, D.C.
Ms. Barbara Yeaman, Brookmont, Maryland
Ms. Joan LaRock, Lovettsville, Virginia
Ms. Elise Heinz, Arlington, Virginia
Ms. Marjorie Stanley, Silver Spring, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. R. Lee Downey, Williamsport Maryland
Mr. Edward K. Miller, Hagerstown, Maryland.

Matters to be discussed at this meeting include:

1. Old and new business
2. Superintendent's report
3. Committee reports
   Plans and Projects Committee
   Recreation Policies and Issues Committee
   Resource Protection Committee
4. Public comments.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: January 28, 1985.

Robert Stanton,

Acting Regional Director, National Capital Region.

[FR Doc. 85-2673 Filed 1-31-85; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Determination of Valid Existing Rights Within the Jefferson National Forest, VA

AGENCY: Office of Surface Mining Reclamation & Enforcement, Interior.

ACTION: Request for Comments.

SUMMARY: The Blackmore Company (Blackmore) is seeking a determination that its proposed surface coal mining operations on Federal lands in the Jefferson National Forest, Scott and Wise Counties, Virginia are not prohibited or limited by Section 522)e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Specifically, Blackmore has requested the Director of OSM to determine that it has "valid existing rights" (VER) under Section 522(e) of SMCRA. This announcement reopens until further notice the public comment period on Blackmore's request.

DATE: Written comments may be submitted until further notice.

ADDRESS: Written comments should be mailed or hand-delivered to: Administrative Record, Office of Surface Mining, Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Dyrel Delaney, Office of Surface Mining, Branch of Regulatory Programs, Room 222, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: Section 522(e) of SMCRA prohibits, subject to "valid existing rights" (VER), "surface coal mining operations" on any Federal lands within the boundaries of any national forest. The term "valid existing rights" is defined in 48 FR 41312-41356 (September 14, 1983).

The Blackmore Company has requested that OSM make a determination that it possesses VER for its planned surface coal mining operation on Federal lands in the Jefferson National Forest in Scott and Wise Counties, Virginia, and, therefore, that Blackmore is not prohibited or limited by section 522(e). The Company asserts that it has the right to mine for coal pursuant to a coal lease from the purported mineral owners, Hagen Estate, Inc. (Hagen). Blackmore asserts ownership of the mineral interests to, and the right to surface mine on, 9,973.89 acres of the Hagen interests which, in turn, total 16,168 acres. The amount of coal acres affected totals 251.8 acres according to Blackmore's estimate.

On November 1, 1984 (49 FR 44029) OSM announced receipt of, and solicited public comment on, Blackmore's application. The initial comment period closed on December 3, 1984. OSM is reopening the comment period to add to the Administrative Record certain information received after December 3, 1984. The comment period will remain open until further notice. Following the close of the comment period, OSM will publish a final determination which will take into account all comments and information in the Administrative Record.

Dated: January 29, 1985.

Carson W. Culp,

Acting Director.

[FR Doc. 85-2692 Filed 1-31-85; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Gleason Corporation, 2999 Overland Avenue, Suite 202, Lost Angeles, California 90064.

2. Wholly-owned subsidiaries or affiliates owned by a common group of individuals which will participate in the operations, and State(s) of Incorporation: Ace Products, Inc., State of Incorporation: Delaware.

1. Parent corporation and address of principal office: Loewengart Corporation, 209 Oregon Street, P.O. Box 300, Mercersburg, PA 17236.

2. Wholly owned subsidiaries which will participate in the operations, and States of incorporation:

(i) Loewengart & Co., Inc., a New York corporation.
(ii) Allied Leather Corporation, a New Hampshire corporation.
(iii) FLC Trucking Company, Inc., a New Hampshire corporation.

James H. Bayne,

Secretary.

[FR Doc. 85-2688 Filed 1-31-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-243)]

Rail Carriers; Burlington Northern Railroad Co., Abandonment Exemption; in Douglas County, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Burlington Northern Railroad Company from the requirements of 49 U.S.C. 10903, *et seq.*, in connection with the abandonment of a 60.59-mile line of railroad between Columbia River and Mansfield, WA, subject to standard employee protective conditions.

DATES: This exemption is effective January 31, 1985. Petitions to reopen must be filed by February 21, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-6 (Sub-No. 243X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Douglas J. Babb, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

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

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

Decided: January 25, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-2687 Filed 1-31-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Center For Advanced Television Studies

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("Act"), the Center for Advanced Television Studies ("CATS") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the identities of the parties to CATS and CATS's nature and objectives. The notification was filed to invoke the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to CATS and its general areas of planned activities are given below.

The following companies are participating in the CATS venture:

American Broadcasting Companies, Inc.
Ampex Corporation
CBS, Inc.
Harris Corporation
Home Box Office, Inc.
National Broadcasting Company, Inc.
Public Broadcasting Service
RCA Corporation
Tektronix Corporation
3M Company

CATS acts as a limited agent to promote and sponsor, through independent academic institutions, basic research into television sciences in the United States, and to encourage engineering graduates to pursue careers in television sciences. The ultimate goal of the CATS venture is to define the ideal television transmission system and identify the technological and economic tradeoffs that must be made in developing and implementing such a system. CATS will conduct no research itself, and its research will not be oriented toward development or improvement of commercial products. Membership in CATS is open to any business, government or private organization actively engaged in research and development in the television sciences who is, and whose ultimate parent is, domiciled in the United States.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-2760 Filed 1-31-85; 10:03 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Collection of Payroll Records of Agricultural Employers using Temporary Alien Workers admitted to the U.S. under the Immigration and Nationality Act
None; No forms
Annually
Businesses or other for-profit; Small businesses or organizations 300 respondents; 900 hours; no forms

Under regulation 20 CFR 655.207(c), a grower must pay a piece rate which enables the average U.S. worker to earn the established hourly rate without having to increase productivity. Payroll records are needed to check compliance. Respondents would be mostly fruit growers using both alien and U.S. workers.

Revision

Office of Pension and Welfare Benefit Programs
Proposed class exemption for certain transactions involving employee benefit plans and securities broker-dealers (Previously titled Prohibited Transactions Class Exemption 79-1 and Recapture Exemption)
1210-0059
Business or other for-profit; small businesses or organizations
143,158 responses; 66,200 burden hours

This class exemption exempts from the prohibited transaction restrictions of ERISA the effecting or executing of securities transactions on behalf of an employee benefit plan by a person who is a fiduciary with respect to the plan and who is acting in such transactions as agent for the plan.

Reinstatement

Employment Standards Administration
Uniform Billing Claim Form 1215-0142; OWCP-82a; OWCP-82b
On occasion
Businesses or other for-profit, Federal agencies or employees; Non-profit institutions; Small businesses or organizations
149,000 responses; 26,720 hours; 2 forms

The Uniform Claim Billing Form is used by institutional providers of health services such as hospitals and clinics to bill OWCP for payment for in-patient care provided to claimants as beneficiaries.

Signed at Washington, D.C. this 29th day of January, 1985.

Paul E. Larson,

Department Clearance Officer.

[FR Doc. 85-2710 Filed 1-31-85; 8:45 am]

BILLING CODE 4510-29-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Manistee, Inc., et al.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period January 21, 1985-January 25, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-15,492; Manistee, Inc., Worcester, MA

A certification was issued covering all workers separated on or after October 28, 1983 and before January 1, 1985.

TA-W-15,437; Cowden Mena Co., Mena, AR

A certification was issued covering all workers separated on or after August 13, 1983 and before December 31, 1984.

TA-W-15,506; Flair Footwear, Inc., Wilkes-Barre, PA

A certification was issued covering all workers separated on or after October 11, 1983.

I hereby certify that the aforementioned determinations were issued during the period January 21, 1985-January 25, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 29, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-2711 Filed 1-31-85; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-15,376]

Trojan Luggage Co., Memphis, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

According to section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a certification of eligibility to apply for worker adjustment assistance on October 18, 1984 to workers and former workers of the Trojan Luggage Company, 2070 Channel Avenue, Memphis, Tennessee. The Notice of Certification was published in the **Federal Register** on October 30, 1984 (49 FR 43604).

Because of inquiries from production workers separated prior to the October 1, 1983 impact date who claimed their unemployment was related directly to the firm's import actions, the Department reviewed the findings on

which its determination was based. A company official also reported that separations of workers prior to the impact date were attributed directly to a lack of work related to management's action to shift its source of articles to foreign firms.

Based on these additional findings, the Department is amending the certification to include all workers at the Channel Avenue plant who were separated by the company on or after June 22, 1983 as eligible to apply for adjustment assistance.

The amended certification for TA-W-15, 376 is hereby issued as follows:

All workers of the Trojan Luggage Company, Channel Avenue Plant, Memphis, Tennessee who became totally or partially separated from employment on or after June 22, 1983 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of January 1985.

Robert O. Deslongchamps,

Director, Office of Legislation and Acturial Services, UIS.

[FR Doc. 85-2712 Filed 1-31-85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of the thirty-seventh meeting of the National Commission for Employment Policy at the Hyatt Regency Hotel on the Inner Harbor, 300 Light Street, Baltimore, Maryland.

DATES: March 1, 1985—9:00 a.m.-12:30 p.m.

STATUS: This meeting will be open to the public.

MATTERS TO BE DISCUSSED: In connection with site visits and presentations made the previous day (February 28), the Commission will discuss issues concerned with the interrelationship between economic development and employment and training in the city of Baltimore, and hear updates on other Commission activities.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia W. McNeil, Director, National Commission for Employment Policy, 1522 K Street NW., Suite 300, Washington, D.C. 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97-300). The Act gives the Commission the broad responsibility of advising the President and the Congress on national employment issues. Business meetings are open to the public. Handicapped individuals wishing to attend should contact Velada Waller of the Commission staff so that appropriate accommodations can be made.

People wishing to submit written statements to the Commission that are germane to the agenda may do so, provided that such statements are in reproducible form and are submitted to the Director at least 5 days before the meeting and not more than 7 days after the meeting.

In addition, members of the general public may request to make oral presentations to the Commission, time permitting. Such statements must be applicable to the announced agenda and written application must be submitted to the Director at least 5 days before the meeting. This application should include: Name and address of applicant, subject of presentation, relation to agenda, amount of time needed, individual's qualifications to speak on the subject, and a statement justifying the need for an oral rather than written statement.

The Commission Chairman has the right to decide to what extent public oral presentations may be permitted at the meeting. Oral presentations will be limited to statements of fact and views and shall not include any questioning of the Commissioners or other participants unless these questions have been specifically approved by the Chairman.

Minutes of the meeting and materials prepared for it will be available for public inspection at the Commission's headquarters, 1522 K Street NW., Suite 300, Washington, D.C. 20005.

Signed in Washington, D.C., this 28th day of January 1985.

Patricia W. McNeil,

Director.

[FR Doc. 85-2714 Filed 1-31-85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on the information collection must be submitted by 30 days from date of publication.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Officer, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506 (202) 786-0233, or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, D.C. 20503, (202) 395-6880.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Service Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506; (202) 786-0233 from whom copies of form and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) the title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension of the Expiration Date of Currently Approved Form.

Title: NEH Standard Project Budget Form and Instructions.

Form Number: 3136-0071.

Frequency of Collection: Occasional, with each NEH Grant Application.

Respondents: All NEH Applicants.

Use: Provide financial plan for expenditure of funds for projected activities.

Estimated Number of Respondents: 2,700.

Estimated Hours of Respondents to Provide Information: 3.

Victor Loughnan,

Director of Administration.

[FR Doc. 85-2636 Filed 1-31-85; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463,

as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs.

Date and Time: February 20, 1985, 8:30 a.m.–8:00 p.m.; February 21, 1985, 8:30 a.m.–5:00 p.m.; February 22, 1985, 8:30 a.m.–12:00 noon.

Place: Ambassador Room, State Plaza Hotel, 2117 E Street NW., Washington, D.C.

Type of Meeting:

Closed—February 20, 10:15 a.m.–8:00 p.m.; February 21, 8:30 a.m.–11:30 a.m.

Open—February 20, 8:30 a.m.–10:15 a.m.; February 21, 12:30 p.m.–5:00 p.m.; February 22, 8:30 a.m.–12:00 noon.

Contact Person: Dr. Peter E. Wilkniss, Division Director, Division of Polar Programs, Room 620, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 357–7766.

Purpose of Committee: Serves to provide expert advice to the U.S. Antarctic Program and the Arctic Program, including advice on polar operations support, budgetary planning, polar coordination and information and science programs.

Agenda

February 20

—8:30 a.m.–10:15 a.m., NSF and DPP Affairs.

—10:15 a.m.–8:00 p.m., Review of Polar Atmospheric Sciences Program.

February 21

—8:30 a.m.–11:30 a.m., Review of Polar Atmospheric Sciences Program.

—12:30 p.m.–3:00 p.m., Review of Arctic Research and Policy Act.

—3:15 p.m–5:00 p.m., Reports on Current Antarctic Field Season.

February 22

—8:30 a.m.–10:30 a.m., Future directions for polar research and the roles of DPP and the Advisory Committee.

—10:45 a.m.–12:00 noon, Other Business.

Reason for Closing: The meeting will deal with a review of grants and declinations in which the Committee will review materials containing the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This meeting will also include a review of peer review documentation pertaining to applicants. Any non-exempt materials that may be discussed at this meeting (proposals that have been awarded) will be inextricably intertwined with the discussion of exempt materials and no further separation is practical. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, National Science Foundation, on July 6, 1979.

Summary Minutes: May be obtained from Contact Person.

Dated: January 29, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–2704 Filed 1–31–85; 8:45 am]

BILLING CODE 7555-01-M

Nominations for Membership February 1, 1985

The National Science Board (NSB) is the policymaking body of the National Science Foundation (NSF). The Board consists of 24 members appointed by the President, with the advice and consent of the Senate, for six-year terms, in addition to the NSF Director *ex officio*, as follows:

Terms Expire May 10, 1986

Dr. Jay V. Beck, Professor Emeritus of Microbiology, Brigham Young University, Provo, Utah

Dr. Peter T. Flawn, President, University of Texas at Austin

Dr. Mary L. Good, Vice President, UOP Inc., Director of Research, Signal UOP Research Center, Des Plaines, Illinois

Dr. Peter D. Lax, Professor of Mathematics and Director, Courant Mathematics and Computing Laboratory, New York University

Dr. Homer A. Neal, Provost, State University of New York at Stony Brook

Dr. Mary Jane Osborn, Professor and Head, Department of Microbiology, University of Connecticut Health Center

Dr. Donald B. Rice, President, The Rand Corporation, Santa Monica, California

Dr. Stuart A. Rice, Dean of the Division of Physical Sciences, The James Franck Institute, University of Chicago

Terms Expire May 10, 1988

Mr. Robert F. Gilkeson, Chairman of the Executive Committee, Philadelphia Electric Company, Philadelphia, Pennsylvania

Dr. Charles E. Hess (Vice Chairman, National Science Board), Dean, College of Agricultural and Environmental Sciences, University of California at Davis

Dr. William F. Miller, President and Chief Executive Officer, SRI International, Menlo Park, California

Dr. John H. Moore, Associate Director, The Hoover Institution, Stanford, California

Professor. William A. Nierenberg, Director, Scripps Institution of Oceanography, University of California at San Diego

Dr. Norman C. Rasmussen, Professor of Nuclear Engineering, Massachusetts Institute of Technology

Dr. Roland W. Schmitt (Chairman, National Science Board) Senior Vice President, Corporate Research and Development, General Electric Company, Schenectady, New York

(One Vacancy)

Terms Expire May 10, 1990

* Dr. Annelise G. Anderson, Senior Research Fellow, The Hoover Institution, Stanford University

Dr. Rita R. Colwell, Vice President for Academic Affairs and Professor of Microbiology, University of Maryland

* Dr. K. June Lindstedt-Siva, Manager, Environmental Sciences, Atlantic Richfield Company, Lost Angeles, California

* Dr. Simon Ramo, Director, TWR Inc., Redondo Beach, California

(Four Vacancies)

Member Ex Officio

Mr. Erich Bloch (Chairman, NSB Executive Committee), Director, National Science Foundation

Section 4(c) of the National Science Foundation Act of 1950, as amended, states that: "The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific leaders in all areas of the Nation."

All members whose terms expire in May of 1986 are eligible for reappointment except Dr. Donald B. Rice has been a member of the Board for two six-year terms. Section 4(d) of the Act states that: "Any person, other than the Director, who has been a member of the Board for twelve consecutive years shall thereafter be ineligible for appointment during the two-year period following the expiration of such twelfth year."

The Board and the Director solicit and evaluate nominations for submission to the President. Nominations accompanied by biographical information may be forwarded to the Chairman, National Science Board, Washington, D.C., 20550, no later than April 1, 1985.

* Nominees pending confirmation by U.S. Senate.

Any questions should be directed to Ms. Catherine Flynn, Staff Assistant, National Science Board (202/357-9763).

Roland W. Schmitt,

Chairman, National Science Board.

[FR Doc. 85-2471 Filed 1-31-85; 8:45 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21695; SR-CBOE-84-30]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

January 28, 1985.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, the Chicago Board Options Exchange, Incorporated ("CBOE"), LaSalle at Van Buren, Chicago, IL 60605 submitted on November 26, 1984, a proposed rule change to authorize CBOE to implement a retail automatic execution system ("RAES") for certain S&P 100 Stock Index Options ("OEX") orders. CBOE proposes to implement RAES as a three month pilot program, beginning February 1, 1985.[1] As a general matter, to the extent CBOE's rules are inconsistent with the terms of the pilot, they would be inapplicable to the RAES program.[2] The Commission solicited comments on the proposal but received none.[3]

RAES would permit the automatic execution of public customer market orders, for five or fewer contracts, in certain OEX series. During the pilot program, only those orders in the four OEX put and four OEX call series in the nearest term expiration month with the highest public customer volumes, as determined by the CBOE, will be eligible for RAES.[4] Each four calls and each four puts will involve contiguous strike prices. To inform members of the eligible series, CBOE will make daily announcements, in the same way new strike prices currently are announced (*i.e.*, by memoranda and taped phone messages).

Under the proposal, those CBOE member firms currently authorized to use CBOE's Order Support System ("OSS")[5] will be automatically authorized to participate in RAES upon its implementation. Although non-OSS participants also will be permitted access to RAES, their participation will be delayed until early March.[6] RAES will be available on a daily basis, following completion of the opening rotation and the updating of quotes in the series involved. Fees for RAES executed orders will be the same as regular orders handled by the Order Book Official. Should RAES become unavailable, eligible orders will be handled manually, as they are currently.

Orders routed through RAES will receive the same price as the displayed market quote at the time the order was entered into OSS. Thus, the terms of the pilot require that participating market makers must trade at the displayed market quote at the time the order was entered into RAES. Participating market makers will be assigned as the contra parties to RAES trades on a rotating basis, with the first market maker each day selected randomly.[7]

Member firms submitting RAES orders to buy will receive executions of those orders at the lowest offering price. Under the terms of the pilot program, when that price is equal to the offering price in the public limit order book, the RAES transaction will occur at that price as an exception to CBOE Rule 6.45 (Priority and Offers ["the priority rule"].[8] Conversely, of Bids member firms submitting RAES market orders to sell will receive executions at the highest bid price and, if that bid price is equal to the book bid, this transaction similarly will take place at the book bid price, also as an exception to the priority rule. In no event, will a RAES order to buy be executed at a price higher than the offering price on the public limit order book, nor will a RAES order to sell be executed at a price lower than the bid price on the public limit order book.

CBOE indicated that only a limited universe of orders are likely to be affected by the exception to the priority rule created by the pilot program. In particular, CBOE noted that the exception could be invoked only when a RAES order (*i.e.*, a public customer market order of five or fewer contracts) is at the same price as a public customer limit order on the book. The CBOE has submitted a letter of commitment to integrate public limit orders on the book into RAES by the end of the pilot phase, if necessary of a manual basis.[9] Hence, the need for this exception should be obviated altogether by the end of the pilot.

After execution of a RAES order, a price report will be generated to the public; a fill report will be sent to the member firm at the branch office or booth from which the order was transmitted; and a trade acknowledgement ticket ("TAT") will be generated and forwarded to the contra market maker.[10] The System also will provide a log of RAES transactions, continuously throughout the day, for inspection by all RAES participants. In addition, CBOE's regulatory staff will receive audit reports regarding all RAES transactions.

The Commission believes that the proposed rule change should benefit public customers, member firms and CBOE floor brokers and market makers. For example, RAES should reduce the

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[1] This proposed rule change is a statement of a new CBOE procedure. In the event RAES is continued beyond the pilot period, the Commission expects the CBOE formally to incorporate RAES into its rules.

[2] Nevertheless, RAES orders will count toward fulfillment of the in-person requirement of CBOE Rule 8.7.

[3] *See* Securities Exchange Act Release No. 21549 (December 7, 1984), 49 FR 49195 (December 18, 1984).

[4] As originally proposed, RAES eligible orders have to be in one of the following eight OEX series in the near term month: (1) Calls on four contiguous strike prices, one below and three above the prior day's closing value, and (2) puts on four contiguous strike prices, one above and three below that value. CBOE amended this aspect of the proposal to provide it with the flexibility to determine daily which four contiguous call and put series are most likely to have the highest public customer volume. *See* letter from Anne Taylor, Secretary and Associate General Counsel, CBOE, to Heidi S. Coppola, Attorney, Division of Market Regulation, SEC, dated January 7, 1985, contained in File No. SR-CBOE-84-30.

[5] OSS provides for the electronic routing of certain away-from-the-market public customer options limit orders to CBOE's public limit order book. Eligible orders must be at a limit price that is above or below the current bid or offer price by a specified amount, determined previously by CBOE ("premium parameters"). *See* File No. SR-CBOE-84-12; Securities Exchange Act Release No. 20611 (April 2, 1984), 49 FR 13932 (April 9, 1984).

[6] Non-OSS members that wish to participate in RAES must do so from terminals at their booths. Because these members' terminals do not posses the OSS capability, programming for RAES will be more time-consuming. Accordingly, CBOE anticipates that these terminals will not be usable for RAES until early March.

[7] The proposed rule change does not require market maker participation. Indeed, at any time throughout the day, market makers may sign on and off the system at terminals located near the OEX crowd. At the end of every day, all signed on market makers are removed from the system. If no market makers sign on to participate at the time RAES is scheduled to open the following day, RAES will not become available that day.

[8] CBOE Rule 6.45 provides, in pertinent part, that "where two or more bids for the same option contract represent the highest price and one such bid is displayed by the Board Broker or Order Book Official . . . such bid shall have priority over any other bid at the post."

[9] *See* letter from Anne Taylor, Secretary and Associate General Counsel, CBOE, to Heidi S. Coppola, Attorney, Division of Market Regulation, SEC, dated January 21, 1985, contained in File No. SR-CBOE-84-30.

[10] As soon as possible after execution, a TAT will be generated for and delivered to market maker/contra-brokers in the OEX crowd. TATs will be generated at the printers located in the OEX crowd. For those market makers absent from the trading crowd, the TATs will be alphabetized and set aside for pick-up.

paper work burden on member firms and market makers in the OEX crowd by: (1) Enabling member firms to route electronically small public customer OEX orders directly to the trading crowd; and (2) generating automated fill-reports to the member firm's location, and TATs to the contra market maker. In addition, by automating the processing of small public customer orders, all parties to the trade are likely to benefit from the enhanced accuracy and timeliness of the price reports and trade comparison process. In this connection, a last-sale audit trail, made easier because of automation, also should be helpful to the parties to a RAES trade. Furthermore, public customers are likely to benefit because the RAES program provides that the price of a RAES order will be guaranteed at the displayed market quote at the time the order was entered into OSS. Finally, automated processing of these small orders should enable floor brokers to spend more time handling larger orders, where their intervention is more likely to be necessary.

In its filing, the CBOE stated that "[t]he exception to book priority for RAES transactions occurring at the book bid or offer when an inside market quote equals the book quote is justified because a significant increase in efficiency is expected to result from RAES." The Commission appreciates that some accommodations may be necessary to integrate new trading systems into the existing exchange market. The Commission does not believe, however that increased efficiency and book priority are mutually inconsistent objectives. Therefore, the Commission does not believe it is appropriate on anything other than an interim basis, to reduce the traditional priority accorded public customer orders. Nevertheless, in view of the limited number of public orders affected [11] and the limited time period that the priority exception rule will be in effect,[12] the Commission has determined to approve the proposed rule change solely for purposes of commencing the pilot program.

By automating small public customer market orders in OEX, as described above, the Commission believes the proposal offers the potential for a significant improvement in the accuracy and efficiency with which small public orders are processed, which should result in more timely and cost-efficent executions of small options orders. By reducing the number of transactions that have to be executed manually on the exchange floor, the proposal also offers the possibility of increased order and efficiency in the handling of non-RAES OEX trades. In addition, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the proposal is consistent with sections 6(b)(5) and 11A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-2706 Filed 1-31-85; 8:45 am]

BILLING CODE 8010-01-M

[11] The priority rule exception only applies to a public customer limit orders of five contracts or less at the best bid or offer price. The average OEX public customer transaction, for the month of December 1984, was 14 contracts.

[12] The CBOE has committed to integrate public customer orders with RAES should the pilot be extended. *See* note 9, *supra*.

SMALL BUSINESS ADMINISTRATION

[Designation of Disaster Loan Area #2181]

Arizona; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 15, 1985, I find that the Counties of Yuma, Mohave and the adjacent county of Maricopa in the State of Arizona constitute a disaster loan area because of damage from severe thunderstorms, strong winds and heavy rainfall beginning on July 12, 1984. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on March 18, 1985, and for economic injury until October 15, 1985, at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Business with credit available elsewhere	8.000
Business without credit available elsewhere	4.000
Business (EIDL) without credit available elsewhere	4.000
Other (Non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 218106 for physical damage and for economic injury the number is 628100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 25, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-2607 Filed 1-31-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0199]

Northern Capital Corp.; Issuance of a Small Business Investment Company License

On September 26, 1984, a notice was published in the **Federal Register** (49 FR 33191) stating that an application has been filed by Northern Capital Corporation, 50 South LaSalle Street, Chicago, Illinois 60675 with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license as a small business investment company.

Interested parties were given until close of business October 26, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0199 on January 17, 1985, to Northern Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 28, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-2695 Filed 1-31-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area No. 6248; Amdt. 1]

Minnesota; Designation of Disaster Loan Area

The above numbered Designation (50 FR 2640) is amended to include the

County of Otter Tail. All other information remains the same, i.e., the termination date for filing applications is the close of business on October 10, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 25, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-2698 Filed 1-31-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area No. 6255]

Texas; Declaration of Disaster Loan Area

The above numbered Declaration (50 FR-2643) is hereby amended to include the County of Jim Hogg. All other information remains the same, i.e. the termination date for filing applications is the close of business on October 10, 1985

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 25, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-2697 Filed 1-31-85; 8:45 am]

BILLING CODE 8025-01-M

California; Region IX Advisory Council Meeting

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 9:00 a.m. on Thursday, March 7, 1985, at the Bank of America Executive Board Room, 555 South Flower Street, Los Angeles, California 90071, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, 350 South Figueroa Street, Suite #600, Los Angeles, California 90071; Telephone No. (213) 688-2977.

Jean M. Nowak,

Director, Office of Advisory Councils.

January 28, 1985.

[FR Doc. 85-2696 Filed 1-31-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-85-2]

Petitions for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before February 20, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. , 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 28, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24421	Saorna Airlines	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 airplane until hush kits are installed.
24420	The Flying Tiger Line, Inc	14 CFR 91.303	To allow petitioner to operate one Stage 1 DC-8 at Miami International Airport until the aircraft is reengined.
20817	Zephyrhills Parachute Center	14 CFR 91.15 (a) and (a)(2), and 105.43(a)	To renew and make permanent the provisions of Exemption 3097. That exemption allows foreign nationals to participate in skydiving events without complying with the parachute equipment and packing requirements of these sections, subject to certain conditions.
20816	Zephyrhills Parachute Center	14 CFR 91.47	To renew and make permanent the provisions of Exemption 3096. That exemption allows petitioner to carry 40 parachutists in DC-3/C47 aircraft and 20 parachutists in Lockheed L-18 aircraft subject to certain conditions and limitations.
24310	Far West Airlines	14 CFR 121.703(d)	To allow petitioner to submit required maintenance reliability reports in accordance with § 135.415(d).
24278	Richard F. Main	14 CFR 61.73(c)	To allow the addition of a multiengine rating to petitioner's commercial, single-engine land instrument rating based on military competence.
24324	Trans Int'l Airlines	14 CFR 121.613, 121.623, and 121.624	To allow petitioner to flight release an airplane under IFR to a destination airport and list an alternate airport when weather forecasts for either or both airports include conditional words such as "occasionally," "briefly," or "a chance of."
24378	All Star Airlines, Inc	14 CFR 43.4, and 43.7	To allow petitioner to acquire parts from Air Canada, which have not been maintained or approved for return to service by persons prescribed, for installation on aircraft when located other than in Canada.
18718	Flight Safety Int'l	14 CFR 61.58(c), and 61.76(d)(2)	To extend the March 31, 1985, termination date of Exemption 2738, as amended. That exemption allows petitioner's trainees to complete a 24-month pilot-in-command check and a Category II pilot authorization check in an FAA-approved flight similator.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
24427	United States Ultralight Foundation, Inc	14 CFR 103.1	To expand the definition of "ultralight" to include powered vehicles of not more than 350 pounds empty weight produced in conformance with a vehicle airworthiness program recognized by the FAA and able to carry two occupants solely for the purpose of flight instruction conducted by holders of FAA flight or ground instructor certificate who have registered under an FAA-approved Powered Ultralight Vehicle Pilot Competency and Registration Program.
24408	Dan River, Inc	14 CFR 21.181	To allow petitioner to operate a Beech King Air 200 airplane utilizing the provisions of a minimum equipment list.
24413	Flight Training Int'l	14 CFR 61.63(d), and 61.157(d)	To allow petitioner's trainees to complete the practical test for issuance of a type rating to be added to a pilot certificate, regardless of its grade, in an airplane simulator as set forth in Part 61, Appendix A.
24412	General Electric	14 CFR 21.181	To allow petitioner to operate Gulfstream G-1159B airplanes utilizing the provisions of minimum equipment list.
24404	Wolfe Industries Aviation	14 CFR 21.181	To allow petitioner to operate a Beech King Air airplane utilizing the provisions of a minimum equipment list.
24411	Superior Training Services	14 CFR 21.181	To allow petitioner to operate Falcon DA-20-C aircraft the provisions of a minimum equipment list.
24407	Executive Aero Systems	14 CFR 135.181	To allow petitioner to operate single-engine aircraft over-the-top or in IFR conditions from point no more than 15 minutes flying time at normal cruise speed from the destination airport provided that airport is reported VFR.
24442	Southern Air Transport	14 CFR 91.303	To allow petitioner to operate up to three Stage I Boeing 707-320C aircraft until hush kits are installed but in no event, beyond September 30, 1985.
24273	Pan Aviation	14 CFR 121.669(a)(6)	To allow petitioner to show the minimum fuel supply in kilograms or litres rather than gallons or pounds on the flight release.
22466	Western Airlines	14 CFR 61.157(e), and Appendix H	To extend the March 31, 1985, termination date of Exemption 3713 and amend its conditions and limitations. The exemption would allow petitioner to use a Phase II B-727 simulator instead of an aircraft for certain pilot flight checks.
24367	Greenlandair	14 CFR 145.73(a)	To allow petitioner, as a foreign repair station, to perform airframe and engine overhauls on equipment that will be operated wholly within the United States.
24439	Aeronautics and Astronautics, Inc	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 airplane to Miami International Airport for maintenance purposes.
24398	Fuqua Industries, Inc	14 CFR 21.181	To allow petitioner to operate HS-125/700 aircraft utilizing the provisions of a minimum equipment list.
20894	Trans-Colorado Airlines, Inc	14 CFR 135.181(a)(2)	To allow petitioner to operate over V95 between Baloo Intersection and Trees Intersection and over V95/V421 between Powes Intersection and Zeans Intersection and allow an alternate means of compliance with the performance requirements and use of procedures for compliance with the en route limitations.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24028	Lineas Aereas Del Caribe Airlines	14 CFR 91.303	To allow petitioner to operate two DC-8-55 aircraft until January 1, 1988 in noncompliance with the operating noise limits. *Denied Jan. 3, 1985.*
22978	Airmark Corporation	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Partial grant Dec. 28, 1984.*
24409	River City Investments, Inc	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: BAC 1-11:
24231	Rich Int'l Airways, Inc	14 CFR 91.303	To exempt petitioner from January 1, 1985, Compliance date contained in 14 CFR Part 91, Subpart E. *Partial grant Jan. 3, 1985.*
23419	Continental Airlines	14 CFR 91.303	To amend Exemption No. 3650a to add 5 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 17 DC9's. *Granted Jan. 3, 1985*
24112	VIASA	14 CFR 91.307	To allow petitioner to operate two Stage 1 DC-8 aircraft in noncompliance with the operating noise limits until December 31, 1988. *Denied Jan. 3, 1985*
20779	Pan American and Department of International Affairs.	Portions of 14 CFR Parts 21, 43, 91 and 121	To extend Exemption No. 3674 which allows petitioner to operate two U.S.-registered B-747 aircraft utilizing the provisions of an FAA-approved minimum equipment list and Pan America's continuous airworthiness maintenance program. *Granted Dec. 26, 1984.*
24006	Trans World Airlines	14 CFR 121.621(a)(1)	To allow petitioner to dispatch scheduled international flights under IFR no alternate conditions when the flight time exceeds 6 hours. *Denied Dec. 17, 1984.*
21228	Scandinavian Airlines Systems	14 CFR Parts 21 & 91	To extend the January 1, 1985, termination date of Exemption 3113A which allows the operation of leased B-747-283B aircraft using the provisions of a minimum equipment list. *Granted Dec. 18, 1984.*
24158	Hawaii Pacific Helicopters, Incorporated	14 CFR 45.29(b)(3)	To allow petitioner to operate the HPH Bell Helicopter B206B that displays 4-inch-high nationality and registration marks (N-numbers), N2995W, in place of the 12-inch-high N-numbers required. *Denied Dec. 20, 1984.*
20583	Tenneco, Inc	14 CFR 61.58	To extend the December 31, 1984, termination date of Exemption 3160, as amended, which allows petitioner's pilots to complete a 24-month pilot-in-command check in an approved flight simulator. *Granted Dec. 19, 1984.*
24127	Johnson & Johnson	14 CFR Portions of Parts 21, 43 & 91	To allow petitioner to operate aircraft under Part 91 with inoperative equipment utilizing the provisions of minimum equipment lists. *Granted Dec. 6, 1984.*
19047	Eli Lilly Corp	14 CFR 61.58(c)	To extend the termination date of Exemption 2935, as amended, to allow petitioner's pilots to complete a 24-month pilot-in-command check in an approved simulator. *Granted Dec. 6, 1984.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24250	A.W. Peterson	14 CFR 121.383(c)	To allow petitioner to continue to serve as a pilot in Part 121 operations after reaching his 60th birthday. *Denied Dec. 11, 1984.*
24174	Air Transport Assn. of America	14 CFR 121.434(c)(1)	To allow member carriers to consider a pilot initially qualifying or upgrading as pilot in command as having satisfied the operating experience requirements after the appropriate number of hours whether or not those pilots had a flight leg observed by an FAA inspector. *Denied Dec. 6, 1984.*
24374	Middle East Airlines	14 CFR 21.181	To permit MEA to operate three leased, U.S.-registered Boeing B-747-2B4B aircraft (serial numbers 21097, 21098, and 21099) using a Federal Aviation Administration (FAA-approved minimum equipment list (MEL). *Partial Grant Dec. 14, 1984.*
24349	Icelandair	14 CFR Portions of Parts 21 & 91	To allow petitioner to operate and maintain a leased, U.S. registered DC-8 aircraft utilizing the provisions of a minimum equipment list. *Granted Dec. 7, 1984.*
23624	Air Transport Assoc. of America	14 CFR 121.413(c)(1)	To allow certain pilot check airmen and pilot flight instructors to be trained by qualifying in a Part 121 carrier's advanced simulator. *Denied Dec. 17, 1984.*
17709	Sohio Alaska Petroleum Co.	14 CFR 43.3	To extend Exemption 2586, as amended, to allow the operation of specific Boeing 727-90C (B-727-90C) airplanes, N766AS, N797AS, and N798AS, pursuant to the lease agreement between petitioner and Alaska Airlines, Inc.; to use a Federal Aviation Administration (FAA)-approved minimum equipment list (MEL); and to permit ASA to maintain the airplanes in accordance with ASA's FAA-approved continuous airworthiness maintenance and inspection program. *Granted Dec. 17, 1984.*
24006	Volpar Inc.	14 CFR 21.19(b)(1)	To allow petitioner to modify the Lockheed 1329 Jetstar aircraft from a four-engine configuration to a two-engine configuration without having to obtain a new type certificate. *Granted Dec. 18, 1984.*
23452	Alitalia Airlines	14 CFR 21.181	To extend the December 31, 1984, termination date of Exemption 3675, as amended, to allow the operation of DC-9-30 aircraft utilizing the provisions of a minimum equipment list. It would extend the December 31, 1984, termination date of Exemption 3675, as amended. *Granted Dec. 27, 1984.*
24218	Pan American World Airways, Inc.	14 CFR Appendix H of Part 121	To permit petitioner to conduct Phase II training and checking in Phase I simulator under an approved Phase IIA program and extend the termination date of PAA's Interim Simulator Upgrade Plan, subject to certain conditions and limitations. *Granted Dec. 31, 1984.*
24210	ICB International	14 CFR 121.3	To allow petitioner to operate as a domestic air carrier, a flag carrier, and as a supplemental carrier without haveing its own air carrier operating certificate when using aircraft wet leased from Connie Kalitta Services, Inc. *Denied Dec. 28, 1984.*
24219	Eastern Airlines Inc.	14 CFR Appendix H of	To permit the reinstatement of petitioner's Interim Simulator Upgrade Plan to allow petitioner to conduct Phase II training and checking in a Phase I simulator under an approved Phase IIA program and to extend the termination date of petitioner's Interim Simulator Upgrade Plan subject to certain conditions and limitations. *Granted Dec. 28, 1984.*
23439	Air Safety Foundations (ASF)	14 CFR Part 103	To extend the March, 1985, termination date Exemption 3783. To permit individuals who have been issued authorization under that exemption by ASF to continue to operate under the terms of that exemption, after the termination of the ASF authorization. *Partial grant Dec. 31, 1984.*
21963	Flight Training Devices (ASF)	14 CFR 63.39(b)(2)	To extend and amend Exemption 3395, which expires 10/31/83, to permit students trained by Flight Training Devices to take that portion of the practical test prescribed in this section in an FAA-approved simulator, subject to certain limitations. *Cancelled exemption not necessary Jan. 14, 1985*
24055 24347	Ports of Call Travel Club, Inc.	14 CFR 91.303	To extend the January 1, 1985, noise level compliance date contained in 14 CFR Part 91, Subpart E. *Partial grant Jan. 18, 1985.*
24435	Kenny Rogers Production	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 1DC-9-10: N9KR *Granted Jan. 17, 1985.*
24169	California State Police-Fresno (CSP)	14 CFR 45.29	To allow and CSP to operate an M-6/235 Maule airplane displaying 3-inch nationality and registration marks (N-numbers) and the words "State Police" in place of the 12-inch-high N-numbers now required by the regulations. *Denied Jan. 9, 1985.*
22359	Kenn-Air	14 CFR 135.261(b)	To extend the January 31, 1985, termination date of Exemption 3468A, to allow petitioner to operate helicopters in hospital emergency medical service without meeting the flightcrew duty time limitations. *Granted Jan. 16, 1985* .
18114	Flying Tigers	14 CFR 121.547(c) and 121.583(a)	To extend the termination date of Exemption 2600, as amended to allow petitioner to carry a reporter, photographer, or journalist aboard DC-8 and B-747 aircraft, subject to certain conditions and limitations. *Granted Jan. 16, 1985.*
22359	Kenn-Air, Inc.	14 CFR 135.261	To extend the December 31, 1982, termination date of Exemption 3468 to allow petitioner to continue to operate helicopters in emergency medical evacuation service from Shands Teaching Hospital, Gainesville, FL, without complying with the Flight and duty time requirements of the section. *Granted Jan. 16, 1985.*
24425	Pan American World Airways, Inc.	14 CFR 121.411(a)(1)(a)(2), (a)(3), (a)(6); 121.411(b); 121.413(b) and (c).	To permit petitioner to utilize certain qualified pilot flight instructors from Aeroformation (a joint venture of Airbus Industrie and FlightSafety International in a training center for Airbus Industrie (A310) aircraft) for the purpose of training petitioner's initial cadre of pilots in the Airbus Industrie A310-222 type airplane without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121 of the FAR. *Granted Jan. 17, 1985.*
24351	Surinam Airways Limited	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date contained in 14 CFR Part 91, Subpart E. *Amended grant Jan. 16, 1985.*
24419	Aerosericios Ecuatorianos, C.A.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date contained in 14 CFR Part 91, Subpart E. *Granted Jan. 11, 1985.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23868	General Electric Co	14 CFR 87.7(b)	To exempt G.E. CF6-50 series engines covered by amended type certificate No. E23FA from the exhaust emissions requirements of 40 CFR § 87.21. *Amended grant Dec. 20, 1984.*
24403	River City Investments, Inc.	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: not later than January 1, 1988: 1 BAC1-11: N700JA *Granted Jan. 3, 1985.*
24294	Regent Air Corp.	14 CFR 121.163 & 121.291	To allow petitioner to begin service without conducting the required 50 hours of proving runs and full emergency evacuation demonstration. *Denied Jan. 9, 1985.*
24034	ARCA Airlines	14 CFR 91.303	To allow petitioner to operate three DC-8-50 series aircraft until January 1, 1988 in noncompliance with the operating noise limits. *Partial grant Jan. 8, 1985.*
24396	American Trans Air	14 CFR 91.303	To extend the January 1, 1985, noise level compliance date contained in 14 CFR Part 91, Subpart E. To allow operation of three Boeing 707-123B aircraft until February 8, 1985. *Granted Jan. 8, 1985.*
24101	Seagreen Air Transport, Ltd.	14 CFR 91.303	To allow petitioner to operate Stage 1 CV 880 aircraft into Miami airport until January 1, 1987 in noncompliance with the operating noise limits. *Denied Jan. 7, 1985.*
23918	International Business Machines Corp.	14 CFR 21.181	To amend Exemption 3973 to add one Lear 55 and two Gulfstream II aircraft and allow operation of these aircraft using the provisions of minimum equipment lists. *Granted Jan. 8, 1985.*

[FR Doc. 85-2603 Filed 1-31-85; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 135—Environmental Conditions and Test Procedures for Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 135 on Environmental Conditions and Test Procedures for Airborne Equipment to be held on February 26-27, 1985 in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Meeting Held in London, England on May 21-22, 1984; (3) Review Committee Revised Terms of Reference and the Remaining Tasks; (4) Review Draft Section 22, "Lightning Induced Transient Susceptibility"; (5) Determine Course of Action on FAA Recommendation to Develop Minimum Standards for Radiation by Receiving Type Avionic Equipment; (6) Review Status of Vibration Testing Requirements for Equipment Installed in Helicopters; (7) Review Status of Requirements for Lighting Direct Effects Protection; and (8) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on January 25, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-2604 Filed 1-31-85; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

Application for Recordation of Trade Name; American Fan Retail Association, Inc.

AGENCY: Customs Service, Treasury.

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to § 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 "American Fan Retail Association, Inc." used by American Fan Retail Association, Inc., a corporation organized under the laws of the State of Delaware, located at 125 Walnut Avenue, Bronx, New York 10454.

The application States that the trade name is used in connection with fans manufactured in Taiwan and Hong Kong.

Before final action is taken on the application, consideration will be given to 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 April 12,1985.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: January 29, 1985.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 85-2693 Filed 1-31-85; 8:45 am]
BILLING CODE 4820-02-M

Internal Revenue Service

Credit for the Elderly and Disabled; Federal Government Annuity Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Announcement.

SUMMARY: This document announces that the Internal Revenue Service will use Social Security Administration, Veterans Administration, and Railroad Retirement Board benefit and annuity files to determine the eligibility for and the proper amount of Credit for the Elderly and Disabled claimed on Form 1040, Schedule R, Credit for the Elderly and the Permanently and Totally Disabled.

FOR FURTHER INFORMATION CONTACT: Ruby Alston, Program Analyst, Returns Processing and Accounting Division, Office of Assistant Commissioner (Returns and Information Processing), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, 202-566-4089, not a toll-free call.

Announcement

The initial Credit for the Elderly and Disabled amount specified in Internal Revenue Code section 22 (formerly 37) is to be reduced by an amount equal to the sum of the amount received by taxpayers as a pension or annuity under title II of the Social Security Act, or the Railroad Retirement Act of 1974, or a law administered by the Veterans Administration, or otherwise excluded from gross income.

To determine eligibility and amount of Social Security Administration, Veterans Administration, and Railroad Retirement benefit and annuity for taxpayers who claimed the Credit for the Elderly and the Permanently and Totally Disabled, the Internal Revenue Service will use Social Security Administration, Veterans Administration, and Railroad Retirement Board benefit and annuity files to match against Forms 1040, Schedule R. If a taxpayer has improperly claimed the credit, he/she will be notified of a proposed credit adjustment to his/her tax return.

Fredric F. Perdue,

Director, Returns Processing and Accounting Division.

[FR Doc. 85-2715 Filed 1-31-85; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Veterans Administration Medical Center, Salisbury, NC, 180-Bed Geropsychiatric Building; Finding of No Significant Impact

It is the intent of the Veterans Administration (VA) to construct a 180-Bed Geropsychiatric Building at the VAMC Salisbury, North Carolina, pending the availability of resources and final administrative approval. The project will provide new construction for 180 Geriatric-psychiatric beds and will aid in meeting the identified need for such care. The proposed action will consist of a two-story structure built with associated parking space for approximately 80 automobiles. The building will encompass approximately 61,900 net square feet for patient beds and associated support functions.

The preferred agency alternative is concept number one which provides a direct connecting corridor to adjacent medical buildings. This concept is the proposed action to be taken. Three various alternative plans have been developed, considering two different site locations within the VAMC. In addition, the "No Action" alternative was evaluated. However, the projected need of additional long-term care would not be met by the existing available beds due to significant program and life safety deficiencies. No offsite construction alternative was considered because available site area for development exists at the VAMC.

The proposed concept for implementation accommodates the site. Only minimal impacts on the human and natural environment affecting air quality will occur.

Mitigation will be undertaken during project development. Minor air quality impacts during construction will be limited with temporary controls instituted. These efforts will include sprinkling and/or chemical treatment of particulates as well as minimizing exposure of soil areas to reduce dust generation.

The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality. (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue NW., Washington, D.C. 20420, (202) 389-3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: January 24, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.

Deputy Administrator.

[FR Doc. 85-2617 Filed 1-31-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 22
Friday, February 1, 1985

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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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time), Tuesday, February 12, 1985.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C, 2nd Floor, Columbia Plaza Office Building, 2401 "E" Street, N.W., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).
3. Proposed Revision to § 607 of Volume II of the Compliance Manual, Affirmative Action.
4. Proposed Modification to an Existing Contract for Services Needed in Connnection with a Training Program.
5. Request for Opinion Letter: Texas Youth Commission.
6. Proposed Compliance Manual Section 82, Representation of Charging Parties/ Complainants and Respondents by Attorneys.
7. Elimination of Compliance Manual Sections 20 and 21, Backlog.

Closed:

Litigation Authorization: General Counsel Recommendation.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634-6748.

Dated: January 30, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85-2796 Filed 1-30-85; 3:56 pm]

BILLING CODE 6750-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time), Monday, February 11, 1985.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C, 2nd Floor, Columbia Plaza Office Building, 2401 E Street, N.W., Washington, DC 20507.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED: *Closed:* Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748.

Dated: January 30, 1985.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 85-2797 Filed 1-30-85; 3:56 pm]

BILLING CODE 6570-06-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, February 6, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of a proposed amendment to Regulation T (Credit by Brokers and Dealers) that would permit a premium-based margining system for the writing of options on equity securities.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: January 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-2730 Filed 1-30-85; 10:29 am]

BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, February 6, 1985, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-2731 Filed 1-30-85; 10:29 am]

BILLING CODE 6210-01-M

5

PAROLE COMMISSION

[5PO401]

PLACE: The Holiday Inn, 500 E. First Street, Long Beach, California.

DATE AND TIME:

Friday—February 1, 1985—9:00 a.m. to 5:30 p.m.

Saturday—February 2, 1985—9:00 a.m. to 12:00 Noon

STATUS: Open.

CHANGES IN THE MEETING: An additional item has been added for deliberation and vote as Item 9. It is a proposed

amendment of the Parole Commission's disclosure rules to allow access to presentence reports by certain prisoners' representatives. Item 9 in the Consent Agenda has been renumbered Item 10, and Item 10 has been renumbered Item 11. Notice of this change is being made at the earliest practicable time. The other matters to be considered remain as published in the **Federal Register** on January 23, 1985 in the original meeting notice.

CONTACT PERSON FOR INFORMATION: Joseph A. Barry, General Counsel, United States Parole Commission, (301) 492-5959.

Dated: January 30, 1985.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 85-2757 Filed 1-31-85; 2:29 pm]

BILLING CODE 4410-01-M

6

SYNTHETIC FUELS CORPORATION

Meetings of the Board of Directors and the Comprehensive Strategy Committee of the Board

SUMMARY: Interested members of the public are invited to attend and observe meetings of the Comprehensive Strategy Committee of the Board of Directors and of the Board of Directors of the United States Synthetic Fuels Corporation to be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1) and section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting of the Board of Directors, the Board may consider a resolution to close a portion of the meeting pursuant to Article II, section 4 of the Corporation's By-laws, section 116(f) of the said Act and sections 4 and 5 of the said policy.

Matters to be considered:

Comprehensive Strategy Committee

Consideration of Draft of "Resource-Technology Combinations Proposal for SFC Business Plan."

Board of Directors

1. Consideration of Coal-Water Fuel Solicitation.
2. Discussion of Directors' Communications with Project Sponsors.

Closed Session

3. Briefing on Review of Contract Management Function.
4. Report on Seep Ridge Project.

Time and Date:

Comprehensive Strategy Committee Meeting 9:30 a.m., February 6, 1985

Board of Directors Meeting, 12:30 p.m., February 6, 1985

Place: U.S. Synthetic Fuels Corporation, 2121 K Street N.W., Room 503, Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Mr. Owen J. Malone, Assistant Secretary, at (202) 822-6341.

United States Synthetic Fuels Corporation.

Robert Gambino,

Group Vice President—Corporate.

January 30, 1985.

[FR Doc. 85-2776 Filed 1-30-85; 3:30 pm]

BILLING CODE 0000-00-M



federal register

Friday
February 1, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Colorado: CO83-5113	July 15, 1983.
Kansas: KS84-4053	Aug. 24, 1984.
Kentucky: KY84-1006	Mar. 16, 1984.
Minnesota: MN85-5000	Jan. 11, 1985.
Oklahoma:	
OK84-4049	Sept. 7, 1984.
OK84-4050	Do.
Virginia:	
VA85-3005	Jan. 18, 1985.
VA85-3001	Jan. 11, 1985.
Wisconsin: WI84-5034	Nov. 2, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Minnesota: MN83-2057 (MN85-5007)	July 29, 1983.
New York:	
NY81-3034 (NY85-3007)	June 5, 1981.
NY83-3013 (NY85-3009)	Apr. 29, 1983.

Signed at Washington, D.C., this 25th day of January 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION NO. CO83-5113 - MOD. #11
(48-FR-32541 July 15, 1983)

Adams, Arapahoe, Boulder Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit and Weld Counties, Colorado

CHANGE:

Laborers
Fringe Benefits as issued in Modification #9 to read Fringe Benefits $2.04

	Basic Hourly Rates	Fringe Benefits

Decision No. KS84-4053 Mod. # 2 (49FR 33784-August 24, 1984)
Leavenworth County, Kansas

Change

	Basic Hourly Rates	Fringe Benefits
Plumbers	$18.46	$2.70

DECISION NUMBER MN85-5000 - MOD. #1
(50 FR 1678 - January 11, 1985)
Anoka, Benton, Carlton, Chisago, Cook, Dakota, Hennepin, Lake, Ramsey, St. Louis, Scott, Sherburne, Stearns, Washington, Winona, & Wright Counties, Minnesota

Change:
Carpenters & Piledrivermen: Area 9

	Basic Hourly Rates	Fringe Benefits
	$15.78	$2.20

DECISION # OK84-4049
MOD. #5
(49 FR 35473 - September 7, 1984
Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, rogers, Tulsa, Sequoyah, Wagoner, and Washington Cos., Oklahoma

CHANGE

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Area I		
Group I	10.65	1.30
Group II	10.95	1.30
Area II		
Group I	9.65	1.30
Group II	9.95	1.30
Area III		
Group I	9.25	1.30
Group II	9.55	1.30
Area IV		
Group I	9.30	1.30
Group II	9.55	1.30

DECISION NO. OK84-4050
MOD. # 4 (49 FR 35477 - September 7, 1984)

Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Roger Mills, Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods and Woodward Counties, Oklahoma

CHANGE

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Area I		
Group I	10.65	1.30
Group II	10.90	1.30
Area II		
Group I	8.95	1.30
Group II	9.20	1.30
Area III		
Group I	9.10	1.30
Group II	9.35	1.30
Area IV		
Group I	9.30	1.30
Group II	9.55	1.30
Area V		
Group I	9.25	1.30
Group II	9.55	1.30
Area VI		
Group I	5.35	
Group II	6.59	

MODIFICATIONS P. 2

DECISION NO. VA85-3005-
MOD. # 1
(50 FR 2764-JANUARY 18,1985
BEDFORD,BOTETOURT,CARROLL, CRAIG,FLOYD,FRANKLIN,GILES, HENRY,MONTGOMERY,PATRICK, PULASKI, & ROANOKE. THE CITIES OF BEDFORD,GALAX, MARTINSVILLE,RADFORD,ROANOKE, & SALEM

CHANGE:

	Basic Hourly Rates	Fringe Benefits
IRON WORKER, STRUCTURAL	$8.50	

DECISION NO. VA85-3001-
MOD. # 1
(50 FR 1284-JANUARY 11,1985
ACCOMACK,GREENSVILLE,ISLE OF WIGHT,JAMES CITY,NORTHAMPTON,SOUTHAMPTON,SURRY, SUSSEX, YORK, THE CITIES OF EMPORIA,FRANKLIN, SUFFOLK, & WILLIAMSBURG

ADD:

	Basic Hourly Rates	Fringe Benefits
FORM SETTER	6.30	

DECISION #WI84-5034-MOD.#1
(49 FR 44191-November 2, 1984)
Green and Rock Counties, Wisconsin

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Millwrights	$16.29	$2.51
Piledrivermen	15.84	2.51
Plumbers and Steamfitters	17.06	2.46

MODIFICATIONS P. 3

DECISION NO. KY84-1008	Basic Hourly Rates	Fringe Benefits
Mod # 1 (49 FR 10000 - March 16, 1984) Boone, Campbell, Kenton, & Pendleton Cos., KY		
CHANGE:		
CARPENTERS & PILEDRIVERMEN	$17.00	2.725
ELECTRICIANS & LINE CONSTRUCTION:		
Electricians:		
Zone 1 - within a 25 mile radius of Hamilton Co. Courthouse, Cincinnati, Ohio	16.00	3.30 + 3½%
Zone 2 - Over 25 mile radius of Hamilton Co. Courthouse	16.65	3.30 + 3½%
Line Construction:		
Zone 1 - within a 18 mile radius of Hamilton Co. Courthouse:		
Linemen & Mechanized Equipment Ops.	17.75	2.55 + 3½%
Groundmen	13.31	2.55 + 3½%
Zone 2 - 18 to 21 mile radius:		
Linemen & Mechanized Equipment Ops.	18.05	2.55 + 3½%
Groundmen	13.61	2.55 + 3½%
Zone 3 - 21 to 25 mile radius:		
Linemen & Mechanized Equipment Ops.	18.15	2.55 + 3½%
Groundmen	13.71	2.55 + 3½%
Zone 4 - Over 25 mile radius of Hamilton Co. Courthouse:		
Linemen & Mechanized Equipment Ops.	18.30	2.55 + 3½%

DECISION NO. KY84-1008 MOD.#1 (Cont'd)	Basic Hourly Rates	Fringe Benefits*
Line Construction:		
Zone 4 (Cont'd)		
Groundmen	$13.86	2.55 + 3½%
ELEVATOR CONSTRUCTORS:		
Mechanics	17.665	3.00+a
Helpers	12.365	3.00+a
Probationary Helpers	8.83	
IRONWORKERS:		
Fence Erectors	14.43	4.33
Reinforcing	15.93	4.27
Structural & Ornamental	16.03	4.33
MARBLE SETTERS	16.635	1.97
MARBLE FINISHERS	16.33	
PLUMBERS & GAS FITTERS	16.05	4.32
ROOFERS	18.15	1.50
SHEET METAL WORKERS:		
Pendleton County:		
Light Commercial *(See scope of work)	8.43	3.28
All other building construction	17.13	4.34
TERRAZZO & TILE WORKERS	16.585	1.97
TERRAZZO & TILE FINISHERS	16.33	
POWER EQUIPMENT OPERATOR:		
Group A	17.46	3.57
Group B	17.30	3.57
Group C	16.94	3.57
Group D	16.16	3.57
Group E	15.83	3.57
Group F	13.13	3.57

*SCOPE OF WORK:
SHEET METAL WORKERS - Light Commercial
Defined as single buildings not inside or adjoining an industrial complex and that type work in the following categories: Bowling alleys, chapels, churches, funeral homes, resturants, service stations, night clubs, pool rooms, nursing homes, skating rinks, storage facilities (45,000 sq. ft. or less), community/all purpose bldgs., recreational bldgs. (gyms, spas), branch banks, barber & beauty shops, stores (45,000 sq. ft. or less), garages (body, tire, muffler & service shop), dance halls, nurseries, kindergarden & pre-school centers, open faced shopping centers

MODIFICATIONS P. 4

DECISION NO. KY84-1008 Mod #1(Cont'd)	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS - Light Commercial (Cont'd) (10 stores or less), office facilities (less than 45,000 sq. ft. & less than 4 floors above grade), and any other bldg. with 20 tons or less HVAC not exceeding 45,000 sq. ft.		

SUPERSEDEAS DECISION

STATE: MINNESOTA
DECISION NUMBER: MN83-5006
COUNTIES: *SEE BELOW
DATE: Date of Publication
Supersedes Decision Numbers MN83-2037 dated July 29, 1983 in 48 FR 34614; MN83-2038 dated July 29, 1983 in 48 FR 34617; & MN83-2059 dated July 29, 1983 in 48 FR 34620
DESCRIPTION OF WORK: Building (Including Residential) Construction Projects

*ANOKA, BENTON, CARLTON, CARVER, COOK, DAKOTA, HENNEPIN, ITASCA, KOOCHICHING, LAKE, RAMSEY, ST. LOUIS, SCOTT, SHERBURNE, STEARNS, & WASHINGTON

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
AREA 1	$18.32	$3.94
AREA 2	18.90	1.71
BOILERMAKERS	17.345	3.25
BRICKLAYERS; STONEMASONS:		
AREA 1	16.88	2.94
AREA 2	15.24	.50
AREA 3	15.73	1.95
AREA 4	15.73	1.95
AREA 5	17.45	1.10
CARPENTERS; MILLWRIGHTS; PILEDRIVERMEN; & SOFT FLOOR LAYERS:		
Building Construction:		
AREA 1:		
Commercial:		
Carpenters & Piledrivermen	15.86	3.87
Residential:		
Carpenters	13.06	3.62
Drywall	13.91	3.62
AREA 2:		
Millwrights	16.36	3.62
AREA 3:		
Soft Floor Layers	15.78	3.02
AREA 4:		
Commercial Inclu. 4-story Apartments:		
Carpenters; Millwrights; & Piledrivermen	14.93	1.10
Residential, inclu. single dwellings, duplexes, row houses, town houses, & walk-up apartments not to exceed 3 stories in height above ground:		
Carpenters	11.40	1.10
AREA 5:		
Carpenters	11.48	
AREA 6:		
Carpenters; Soft Floor Layers	15.00	1.60
Millwrights	15.54	1.60

	Basic Hourly Rates	Fringe Benefits
CARPENTERS (CONT'D):		
Building:		
AREA 7:		
Carpenters; Soft Floor Layers	$14.62	$2.15
Millwrights	15.05	2.15
AREA 8:		
Carpenters; Piledrivermen; & Soft Floor Layers	15.04	1.00
AREA 9:		
Carpenters; Soft Floor Layers	14.64	1.40
AREA 10:		
Carpenters; Millwrights; & Soft Floor Layers	14.35	.70
AREA 11:		
Carpenters	14.49	1.95
Millwrights:		
Commercial	17.32	
Residential	85%JR	
AREA 12:		
Commercial:		
East Portion	16.47	.85
West Portion	14.12	.85
Residential:		
East Portion	13.18	.85
West Portion	11.30	.85
CARPENTERS; PILEDRIVERMEN:		
Site Preparation, Excavation, & Incidental Paving:		
AREA 1	15.86	3.87
AREA 2	14.82	1.90
AREA 3	16.47	
AREA 4	16.13	1.85
AREA 5	15.39	2.65
AREA 6	16.73	1.00
AREA 7	16.33	1.65
AREA 8	13.87	1.10
AREA 9	14.27	.95
AREA 10	13.97	1.00
AREA 11	15.73	2.65
AREA 12	17.03	.95
AREA 13	15.88	1.10

DECISION NUMBER MN83-5006 PAGE 2

	Basic Hourly Rates	Fringe Benefits
CEMENT MASONS (Building):		
AREA 1	$17.03	$2.02
AREA 2	14.95	.75
AREA 3	15.85	.95
AREA 4:		
Commercial	15.10	.95
Residential	13.00	.95
AREA 5	17.10	1.10
CEMENT MASONS:		
Site Preparation, Excavation, & Incidental Pavings:		
AREA 1	17.03	2.02
AREA 2	17.58	.95
AREA 3	15.20	.95
ELECTRICIANS:		
AREA 1:		
Commercial Building, inclu. new construction of multiple dwellings in excess of 4-plexes & all residential remodeling, rewiring, & repairing of any apartment project exceeding 8 units or 400 amp service:		
Electricians	16.80	12%+ 3.5%
Cable Splicers	17.40	12%+ 3.5%
Residential inclu. all new single family dwellings with separate service & multiple dwellings up to & inclu. 4-plexes, & all residential remodeling, rewiring & repairing, except that any single apartment project inclu. a change of main service entrance, shall not exceed 8 living units or 400 amps	14.50	23%
AREA 2:		
Commercial, inclu. residential quarters over 3 stories:		
Electricians	17.76	29.6%
Cable Splicers	18.26	29.6%

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS (CONT'D):		
AREA 2 (Cont'd):		
Residential, inclu. all new family dwellings up to & inclu. 4-plexes, all residential remodeling, rewiring, & repairing in apartment buildings up to & inclu. a 400 ampere service limited to 3 floors occupied as living quarters floors, & non-elevator apartment bldgs.	$14.30	23%
AREA 3:		
Electrical Installations over $75,000.00	15.75	13.5%+ 1.32
Electrical Installations under $75,000.00	13.31	13.5%+ 1.32
AREA 4	15.75	32%
AREA 5:		
Commercial Building:		
Electrical Installations above $14,000.00:		
Electricians	14.04	32½%
Cable Splicers	14.39	32½%
Electrical Installations under $14,000.00:		
Electricians	11.54	32½%
Cable Splicers	12.09	32½%
Residential up to & inclu. 6-plexes under 1 roof	9.19	3%+1.44
Industrial:		
Electricians	15.93	32½%
Cable Splicers	16.48	32½%
ELEVATOR CONSTRUCTORS:		
AREA 1:		
Mechanics	17.935	3.00 +a+b
Helpers	70%JR	3.00 +a+b
Helpers (Prob.)	50%JR	
AREA 2:		
Mechanics	14.96	3.29 +a+b
Helpers	70%JR	3.29 +a+b
Helpers (Prob.)	50%JR	
GLAZIERS:		
AREA 1	16.44	3.06
AREA 2	11.47	c+d
AREA 3	14.60	1.90+e

DECISION NUMBER MS85-5006 PAGE 3

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS:		
AREA 1	$17.10	$3.64
AREA 2	15.22	3.85
LATHERS:		
AREA 1	16.05	3.71
AREA 2	12.85	.90
MARBLE SETTERS; TERRAZZO WORKERS; & TILE SETTERS:		
AREA 1:		
Marble Setters	16.40	2.94
Tile Setters	16.65	2.32
AREA 2:		
Marble Setters & Tile Setters	14.93	1.20
AREA 3:		
Terrazzo Workers	17.61	1.85
MARBLE SETTERS' FINISHERS; TERRAZZO WORKERS' FINISHERS; & TILE SETTERS' FINISHERS:		
Marble Setters' Finishers	11.40	1.12
Terrazzo Workers' Finishers; & Floor Machines	17.67	.65
Base Machine	18.00	.65
Tile Setters' Finishers	14.65	1.32+f
PAINTERS:		
AREA 1:		
Brush; Roller & Wall Paper Hanger	16.06	2.68
Sandblaster; Spray; Steel; Swing Stage & Epoxy	16.81	2.68
Residential of 8 units or less	80%JR	2.68
AREA 2:		
Brush	12.48	1.59
Tapers	12.47	1.59
Sandblasters; Spray; Steel, Stage, Belt, Storage Ben, Tank; Steeplejacks	13.48	1.59
Sanders	9.35	1.59
AREA 3:		
Commercial Repaint & Residential:		
Brush	12.00	1.93
Paperhanger; Spray; Steel; & Taping	12.60	1.93
Industrial Repaint:		
Brush	13.61	1.93
Paperhanger; Spray; Steel; & Taping	14.21	1.93
New Commercial & New Industrial:		
Brush	14.61	1.93
Paperhanger; Spray; Steel; & Taping	15.21	1.93
PAINTERS (CONT'D):		
AREA 4:		
Brush; Drywall Finishers; & Paperhangers	$15.12	$1.82
Drywall Sander	11.34	1.82
Sandblaster; Spray; Swing Stage, Boatswain Chair, Window Jack, Safety Belt, & Erected Structural Steel	15.82	1.82
PIPEFITTERS; PLUMBERS; & STEAMFITTERS:		
AREA 1:		
Pipefitters & Steamfitters	17.99	3.81
Plumbers	14.95	7.14+g
AREA 2:		
Plumbers & Steamfitters:		
Commercial	14.88	3.36
Industrial	15.88	3.36
Residential, Inclu. Single & Multiple family dwellings up to & inclu. 100 unit apartment houses 3 stories above ground	11.91	3.36
AREA 3:		
Plumbers & Steamfitters:		
Commercial	15.76	3.90
Residential, single family dwellings & 2-story apartment buildings of 20 units or less	13.45	3.90
AREA 4	15.80	3.60
AREA 5:		
Pipefitters & Steamfitters	16.72	5.39
Plumbers	16.53	5.58
AREA 6:		
Heavy Commercial & Industrial over $25,000.00	18.37	2.25+h
Residential & Light Commercial not to exceed $25,000.00	13.85	2.25+h
PLASTERERS:		
AREA 1	14.05	3.72
AREA 2	14.90	2.87
AREA 3	14.45	.50
AREA 4	15.50	1.30
AREA 5	12.95	.40
ROOFERS:		
AREA 1	16.48	2.77
AREA 2	14.33	1.57
AREA 3	14.58	1.92
AREA 4	13.58	1.52
SHEET METAL WORKERS:		
AREA 1:		
Commercial	19.19	2.27
Residential	10.50	2.10

DECISION NUMBER MS85-5006 PAGE 4

	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS (CONT'D):		
AREA 2	$16.01	$1.72
AREA 3	16.63	3.78
AREA 4:		
Commercial	19.66	2.20
Residential	10.50	2.10
AREA 5:		
Commercial	15.15	2.94+i
Residential	68%JR	2.94+i
SPRINKLER FITTERS:		
AREA 1	17.83	4.47
AREA 2	16.47	3.23
LANDSCAPERS & SOD LAYERS for all work, except Residential of 4 units or less	6.80	1.10
LABORERS (Building):		
AREA 1:		
Class 1	14.00	2.60
Class 2	14.15	2.60
Class 3	14.40	2.60
Class 4	14.70	2.60
AREA 2:		
Class 1	11.75	1.35
Class 2	11.80	1.35
Class 3	11.85	1.35
Class 4	11.90	1.35
Class 5	12.00	1.35
Class 6	12.05	1.35
Class 7	12.10	1.35
AREA 3:		
Class 1	12.05	2.65
Class 2	12.20	2.65
Class 3	12.45	2.65
Class 4	12.75	2.65
AREA 4:		
Class 1	10.40	.65
Class 2	10.50	.65
Class 3	10.60	.65
Class 4	10.65	.65
Class 5	10.75	.65
Class 6	10.80	.65
LABORERS (Site Preparation, Excavation & Incidental Paving):		
AREA 1:		
Class 1	12.35	2.85
Class 2	12.50	2.85
Class 3	12.55	2.85
Class 4	12.70	2.85
Class 5	12.80	2.85
Class 6	13.05	2.85
AREA 2:		
Class 1	10.00	2.75
Class 2	10.15	2.75
Class 3	10.20	2.75
Class 4	10.35	2.75
Class 5	10.45	2.75
Class 6	10.70	2.75
LABORERS (CONT'D):		
AREA 3:		
Class 1	$11.88	$3.00
Class 2	12.03	3.00
Class 3	12.08	3.00
Class 4	12.23	3.00
Class 5	12.33	3.00
Class 6	12.58	3.00
AREA 4:		
Class 1	12.68	2.20
Class 2	12.83	2.20
Class 3	12.88	2.20
Class 4	13.03	2.20
Class 5	13.13	2.20
Class 6	13.33	2.20
AREA 5:		
Class 1	10.00	1.40
Class 2	10.15	1.40
Class 3	10.20	1.40
Class 4	10.35	1.40
Class 5	10.45	1.40
Class 6	10.70	1.40
POWER EQUIPMENT OPERATORS (Building):		
Group 1	19.09	2.65
Group 2	18.75	2.65
Group 3	17.95	2.65
Group 4	17.34	2.65
Group 5	17.00	2.65
Group 6	16.83	2.65
Group 7	15.32	2.65
Group 8	14.20	2.65
Group 9	13.64	2.65
POWER EQUIPMENT OPERATORS (Site Preparation, Excavation & Incidental Paving):		
AREA 1:		
Group 1	16.16	2.65
Group 2	15.63	2.65
Group 3	15.46	2.65
Group 4	15.34	2.65
Group 5	13.22	2.65
Group 6	12.48	2.65
AREA 2:		
Group 1	15.52	2.65
Group 2	14.99	2.65
Group 3	14.63	2.65
Group 4	14.70	2.65
Group 5	12.59	2.65
Group 6	11.87	2.65

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (CONT'D):		
AREA 3:		
Group 1	$13.78	$2.65
Group 2	12.89	2.65
Group 3	12.70	2.65
Group 4	12.59	2.65
Group 5	11.16	2.65
Group 6	10.66	2.65
TRUCK DRIVERS (Building):		
AREA 1:		
Group 1	14.90	2.10
Group 2	14.55	2.10
Group 3	14.45	2.10
Group 4	13.60	2.10
AREA 2	11.75	
AREA 3	10.40	

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS (Site Preparation, Excavation & Incidental Paving):		
AREA 1:		
Group 1	$14.95	$2.10
Group 2	14.40	2.10
Group 3	14.30	2.10
Group 4	14.00	2.10
AREA 2:		
Group 1	12.87	2.10
Group 2	12.26	2.10
Group 3	12.13	2.10
Group 4	11.86	2.10
AREA 3:		
Group 1	14.95	2.10
Group 2	14.40	2.10
Group 3	14.30	2.10
Group 4	14.00	2.10

AREA DESCRIPTIONS

ASBESTOS WORKERS

AREA 1: Anoka, Benton, Carver, Dakota, Hennepin, Ramsey, Scott, Sherburne, Stearns, & Washington Counties
AREA 2: Carlton, Cook, Itasca, Koochiching, Lake, & St. Louis Counties

BRICKLAYERS & STONEMASONS

AREA 1: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Sherburne (City of Elk River), & Washington Counties
AREA 2: Benton, Sherburne (Exclu. city of Elk River), & Stearns Counties
AREA 3: Carlton, Cook, Lake, & St. Louis (South of a line between Twps. #54 & #55, 2 miles North of Cotton) Counties
AREA 4: Itasca, & St. Louis (North of a line between Twps. #54 & #55, 2 miles North of Cotton) Counties
AREA 5: Koochiching County

CARPENTERS; MILLWRIGHTS; PILEDRIVERMEN; & SOFT FLOOR LAYERS
(Building Construction)

AREA 1: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott (Exclu. SW Tip), Sherburne (Southern Tip), & Washington Counties
AREA 2: Anoka, Benton (Little Rock & Skaja), Carver, Dakota, Hennepin, Itasca, Ramsey, Scott, Sherburne (Southern Tip), & Washington Counties
AREA 3: Anoka, Carver, Dakota, Hennepin, Ramsey & Washington Counties
AREA 4: Benton (Exclu. Little Rock & Skaja), Sherburne (Exclu. Southern Tip), & Stearns Counties
AREA 5: Benton (Little Rock & Skaja) County
AREA 6: Carlton County
AREA 7: Cook, Lake (South part, Exclu. Sawbill Landing), & St. Louis (Alborn, Arnold, Bartlett, Birch, Brookston, Canyon, Clinton, Culver, Duluth, Floodwood, Gowan, Island, Kelsey, Lakewood, Meadowlands, Munger, Palmers, Payne, Presit, Shaw & Taft) Counties

AREA DESCRIPTIONS (CONT'D)

CARPENTERS; MILLWRIGHTS; PILEDRIVERMEN; & SOFT FLOOR LAYERS (CONT'D)

AREA 8: Itasca (Goodland, Keewatin, Nashwauk, Pengilly, Swan River, Togo & Wawina), Koochiching (Bramble, Ranch, & Silverdale), & St. Louis (Bengal, Bear Lake, Buhl, Chisholm, Gheen, Greaney, Hibbing, Kelly Lake, Nett Lake, Orr, Riley, Side Lake, Silica, & Toivola) Counties
AREA 9: Itasca (Exclu. Goodland, Keewatin, Nashwauk, Pengilly, Swan River, Togo & Wawina) County
AREA 10: Koochiching (Exclu. Bramble, Ranch, & Silverdale), & St. Louis (NW Part) Counties
AREA 11: Lake (North Part, Inclu. city of Sawbill Landing), St. Louis (Allen, Aurora, Babbitt, Biwabik, Britt, Buyck, Casco, Central Lakes, Cook, Cusson, Ely, Embarrass, Eveleth, Florenton, Forbes, Forsman, Gilbert, Hoyt Lakes, Idington, Iron Junction, Makinen, McComber, Meseba, Mountain Iron, Ridge, Sax, Sherman Corners, Sherwood, Skibo, Soudan, Tower, Virginia, Wahlston, Winton, & Zim) Counties
AREA 12: Scott (SW Tip) County

CARPENTERS & PILEDRIVERMEN
(Site Preparation, Excavation, & Incidental Paving)

AREA 1: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott (Exclu. SW Tip), Sherburne (SE ¼, Inclu. Big Lake, Elk River & Zimmerman), & Washington Counties
AREA 2: Benton (S 3/4, Inclu. Foley), Sherburne (NW 3/4, Inclu. Clear Lake & Becker), & Stearns Counties
AREA 3: Benton (N ¼, Exclu. Foley) County
AREA 4: Carlton County
AREA 5: Cook, Lake (S ½, Inclu. Two Harbors, Isabella & Finland), & St. Louis (S 1/3, Inclu. Fond Du Lac, Floodwood, Cotton, & Proctor) Counties
AREA 6: Itasca (E. Strip, Inclu. Keewatin, & Nashwauk), Lake (N ½), & St. Louis (SE 2/3, Inclu. Cook, Cusson, & Ely and W. Strip, Inclu. Chisholm, Orr, & Gheeney) Counties
AREA 7: Itasca (Cass Lake & Ball Club) County
AREA 8: Itasca (W. Strip) County
AREA 9: Koochiching (Exclu. SE Corner) County
AREA 10: Koochiching (SE Corner) County
AREA 11: St. Louis (City of Duluth) County
AREA 12: St. Louis (N. Part, Inclu. Rainy Lake Area) County
AREA 13: Scott (SW Tip) County

CEMENT MASONS
(Building Construction)

AREA 1: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Sherburne, & Washington Counties
AREA 2: Benton & Stearns Counties
AREA 3: Carlton, Cook, Lake, & St. Louis (S & E of the White Face River) Counties
AREA 4: Itasca & St. Louis (N. of the White Face River) Counties
AREA 5: Koochiching County

CEMENT MASONS
(Site Preparation, Excavation, & Incidental Paving)

AREA 1: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Sherburne, & Washington Counties
AREA 2: Carlton, Cook, Lake, & St. Louis (S. of T. 59N) Counties
AREA 3: Itasca, & St. Louis (N. of T. 59 N) Counties

AREA DESCRIPTIONS (CONT'D)

ELECTRICIANS

AREA 1: Anoka, (Exclu. Anoka & Fridley Twps. & the cities of Andover, Anoka, Columbia Heights, Coon Rapids, Fridley, Hilltop, Ramsey & Spring Lake Park), Dakota, Ramsey, Sherburne (E. of Becker & Santiago Twps.) & Washington Counties
AREA 2: Anoka (Anoka & Fridley Twps. & the cities of Andover, Anoka, Columbia Heights, Coon Rapids, Fridley, Hilltop, Ramsey & Spring Lake Park), Carver, Hennepin, & Scott Counties
AREA 3: Benton, Sherburne (Becker, Clear Lake, Haven, Palmer, & Santiago Twps.) & Stearns Counties
AREA 4: Carlton, Cook, Itasca (Southerly 12 Twps., Inclu. Harris, Feely, Blackberry, Spang, Coodland, Sago, & Wawina), Lake & St. Louis (S. Part, bounded on the N. by the N. line of Kelsey Twp. extended E & W) Counties
AREA 5: Itasca (Exclu. Section 5. of a line extending E. & W. of the South line of Grand Rapids & Trout Lake Twps.), Koochiching, & St. Louis (N. part, bounded on the South by the South line of Ellsburg Twp., extended E. & W.) Counties

ELEVATOR CONSTRUCTORS

AREA 1: Anoka, Carver, Dakota, Hennepin, & Ramsey Counties
AREA 2: Lake & St. Louis Counties

GLAZIERS

AREA 1: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Sherburne (S. Part, Inclu. Big Lake & Elk River), & Washington Counties
AREA 2: Benton, Itasca, Sherburne (N. Part, Exclu. Big Lake & Elk River) & Stearns Counties
AREA 3: Carlton, Cook, Koochiching, Lake, & St. Louis Counties

IRONWORKERS

AREA 1: Anoka, Benton, Carver, Dakota, Hennepin, Ramsey, Scott, Sherburne, Stearns, & Washington Counties
AREA 2: Carlton, Cook, Itasca, Koochiching, Lake, & St. Louis Counties

LATHERS

AREA 1: Anoka, Benton, Carver, Dakota, Hennepin, Ramsey, Scott, Sherburne, Stearns, & Washington Counties
AREA 2: Lake, & St. Louis Counties

MARBLE SETTERS; TERRAZZO WORKERS; & TILE SETTERS

AREA 1: Anoka, Benton, Carlton, Carver, Cook, Dakota, Hennepin, Itasca, Koochiching, Lake, Ramsey, St. Louis (Exclu. City of Duluth), Scott, Sherburne, Stearns, & Washington Counties
AREA 2: St. Louis (City of Duluth) County
AREA 3: Anoka, Benton, Carlton, Carver, Cook, Dakota, Hennepin, Itasca, Koochiching, Lake, Ramsey, St. Louis, Scott, Sherburne, Stearns, & Washington Counties

PAINTERS

AREA 1: Anoka, Carver, Hennepin, Scott, & Sherburne (E 2/3) Counties
AREA 2: Benton, Sherburne (W 1/3), & Stearns Counties
AREA 3: Carlton, Cook, Itasca, Koochiching, Lake, & St. Louis Counties
AREA 4: Dakota, Ramsey & Washington Counties

AREA DESCRIPTIONS (CONT'D)

PIPEFITTERS; PLUMBERS; & STEAMFITTERS

AREA 1: Anoka, Carver, Hennepin, Scott, Sherburne (E. of a line running northeasterly from the point of Wright County that lies furthest north to that point of Mille Lacs County that is South by west) Counties
AREA 2: Benton, Sherburne (W. of a line running northeasterly from the northern point of Wright County to the SW Tip of Mille Lacs County), & Stearns Counties
AREA 3: Carlton, Cook (A strip 20 miles inland along the shores of Lake Superior), Lake (A strip 20 miles inland along the shores of Lake Superior), & St. Louis (S. of an E-W line drawn through Cotton) Counties
AREA 4: Cook (Exclu. a strip 20 miles inland along the shores of Lake Superior), Itasca, Lake (Exclu. a strip 20 miles inland along the shores of Lake Superior), & St. Louis (N. of an E-W line drawn through Cotton) Counties
AREA 5: Dakota, Ramsey & Washington Counties
AREA 6: Koochiching County

PLASTERERS

AREA 1: Anoka (Extreme eastern section), Dakota, Ramsey, & Washington Counties
AREA 2: Anoka (Exclu. Extreme eastern section), Carver, Hennepin, Scott, & Sherburne Counties
AREA 3: Benton & Stearns Counties
AREA 4: Carlton, Cook, Lake & St. Louis (S & E of the White Face River) Counties
AREA 5: Itasca & St. Louis (N. of the White Face River) Counties

ROOFERS

AREA 1: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, & Washington Counties
AREA 2: Benton, Sherburne, & Stearns Counties
AREA 3: Carlton, Cook, Lake, & St. Louis (S 1/3) Counties
AREA 4: Itasca, Koochiching & St. Louis (N 2/3) Counties

SHEET METAL WORKERS

AREA 1: Anoka, Dakota, Ramsey & Washington Counties
AREA 2: Benton, Sherburne, & Stearns Counties
AREA 3: Carlton, Cook, Lake, & St. Louis (S 1/3) Counties
AREA 4: Carver, Hennepin, & Scott Counties
AREA 5: Itasca, Koochiching, & St. Louis (N 2/3) Counties

SPRINKLER FITTERS

AREA 1: Anoka, Dakota, Hennepin, Ramsey, Scott, & Washington Counties
AREA 2: Benton, Carlton, Carver, Cook, Itasca, Koochiching, Lake, St. Louis, Sherburne, & Stearns Counties

LABORERS (Building Construction)

AREA 1: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Sherburne, & Washington Counties
AREA 2: Benton & Stearns Counties
AREA 3: Carlton, Cook, Lake, & St. Louis (S. of T. 55N) Counties
AREA 4: Itasca, Koochiching, & St. Louis (N. of T. 55N) Counties

AREA DESCRIPTIONS (CONT'D)

LABORERS (Site Preparation, Excavation, & Incidental Paving)

AREA 1: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Sherburne, & Washington Counties
AREA 2: Benton & Stearns Counties
AREA 3: Carlton, Cook, Lake, & St. Louis (S. of T. 55N) Counties
AREA 4: Itasca & St. Louis (N. of T. 55N) Counties
AREA 5: Koochiching County

POWER EQUIPMENT OPERATORS (Site Preparation, Excavation, & Incidental Paving)

AREA 1: Anoka, Carver, Cook, Dakota, Hennepin, Lake, Ramsey, St. Louis, Scott, Sherburne (S. of the Northern boundary of T. 33-N and east of the western boundary of R. 27-W), & Washington Counties
AREA 2: Benton (E. of the western right-of-way of U.S. Hwy #10), Carlton, Itasca (E. of the western right-of-way of Minn. Hwy #6), Koochiching (E. of a N-S line from the Canadian border to Pelland, the western right-of-way of U.S. Hwy #71 from Pelland to Big Falls & Minn. Hwy #6), Sherburne (Exclu. S. of the Northern boundary of T. 33-N and east of the western boundary of R. 27-W), & Stearns (E. of the western righ-of-way of Minn. Hwy. #15) Counties
AREA 3: Benton (Exclu. E. of the western right-of-way of U.S. Hwy #10), Itasca (Exclu. E. of the western right-of-way of Minn. Hwy #6), Koochiching (Exclu. E. of a N-S line from the Canadian border to Pelland, the western right-of-way of U.S. Hwy #71 from Pelland to Big Falls & Minn. Hwy #6), & Stearns (Exclu. E. of the western right-of-way of Minn. Hwy. #15) Counties

TRUCK DRIVERS (Building Construction)

AREA 1: Anoka, Carlton, Carver, Cook, Dakota, Hennepin, Itasca (E. of T.H. 6), Lake, Ramsey, St. Louis, Scott, Sherburne, & Washington Counties
AREA 2: Benton & Stearns Counties
AREA 3: Itasca (W. of T. H. 6) & Koochiching Counties

TRUCK DRIVERS (Site Preparation, Excavation, & Incidental Paving)

AREA 1: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Sherburne, & Washington Counties
AREA 2: Benton, Itasca (W. of T.H. 6), Koochiching & Stearns Counties
AREA 3: Carlton, Cook, Itasca (E. of T.H. 6), Lake, & St. Louis Counties

CLASSIFICATION DEFINITIONS

LABORERS CLASSIFICATIONS (Building Construction)

AREA 1:
CLASS 1: General; Carpenter Tender; Concrete; Damp Proofer below grade; Drill Runner Tender; Dumpman - dirt, asphalt, concrete, cement; Heater Tender; Hot Tar Caulker - Corker; Joist Handler; Material Handler - all types; Power Buggy; Rebar; Snow Blower Operator; & Tool Crib Checker
CLASS 2: Chain Saw Operator; Concrete Saw, Drill Operator; Concrete Vibrator; Demolition & Wrecking excluding remodeling; Mason Tender; Mortar Mixer - cement or any other substitute material or composition; Pipe Handler; Pneumatic & Electric Tools, Jackhammer, Paving Buster, Chipping Hammer, Tamper Operator, etc.; Swing Stage Line Scaffold (not including "patent" Scaffolding); & Torchman - gas, electric, thermal or similar device
CLASS 3: Caisson Work; Nozzle Operator - Gunite, Cement, Sandblasting; Pipelayer; Refractory Worker; Sheeting Setter & Drivers, Heavy Building Excavation; Underground Work - open ditch or excavation 8' below grade, & Underpinning
CLASS 4: Driller for Blasting purposes; Dynamite Blasters or substitute products Tovex TR, water, gas, gel, bristar, silent Dynamite, etc.

CLASSIFICATION DEFINITIONS (CONT'D)

LABORERS CLASSIFICATIONS (Building Construction) Cont'd

AREA 2:
CLASS 1: General; Demolition & Wrecking; Torchman Demolition; Hot Tar Caulker & Cooker; Concrete Joint Saw Op.; & Damp Proofer below grade
CLASS 2: Concrete Core Drill; & Power Buggy Operator
CLASS 3: Miner Tender; Dumpman; Chipping Hammer Operator; Concrete Vibrator Operator; Mixer of Mortar, Cement or any substitute materials or composition; Automatic Tamper Operator; Laborers on Rope Swing Scaffold, but not inclu. Safety Scaffold; Cement Handler (dry sack or bulk, over two hours per day); Plaster Tender; Block Tender Handling 12" concrete blocks or Larger; Gunite Machine Operator
CLASS 4: Jackhammer Man
CLASS 5: Underground Work, Caisson Work, Cofferdam Work, Tunnel Work, House Moving & Underpinning Work, including Sheet Setters & Drivers on Heavy Building Excavation. 8' or more below the adjoining ground where the excavation is not more than 8' wide (Not Applicable to Air Pressure Work)
CLASS 6: Dynamite Men; & Pipe Layers
CLASS 7: Nozzleman
AREA 3:
CLASS 1: General; Carpenter Tender; Concrte Laborer; Damp Proofer below grade; Drill Runner Tender; Dumpman - dirt, asphalt, concrete, cement; Heater Tender; Hot Tar Caulker - Corker; Joist Handlers (Inclu. Power Buggy); Rebar; Snow Blower Op.; & Tool Crib Checker
CLASS 2: Chain Saw Op.; Concrete Saw, Drill Op.; Concrete Vibrator; Demolition & Wrecking, Exclu. Remodeling; Gunite, Sandblasting Machine Operator; Mason Tender; Mortar Mixer - Cement or any other substitute material or composition; Pipe Handler; Pneumatic & Electric Tools, Jackhammer, Paving Buster, Chipping Hammer, Tamper Op., etc.; Swing Stage Line Scaffold (Not Inclu. "patent" scaffolding); Torchman - gas, electric, thermal or similar device
CLASS 3: Caisson Work; Nozzle Op. - gunite, cement, sandblasting; Pipelayer; Refractory Worker; Sheeting Setter and Drivers, Heavy Building Excavation; Underground Work - open ditch or excavation 8' below grade; & Underpinning
CLASS 4: Driller for Blasting Purposes; Dynamite Blasters or substitute products Tovex TR, water, gas, gel, bristar, silent dynamite, etc.
AREA 4:
CLASS 1: Common; Concrete Shoveler; Damp Proofer below grade; Steel Joist Handler; Salamander & Gas Heater Tender; Snow Blower Operator; Tamper; & Reinforced Steel
CLASS 2: Carpenter Tender; Bricklayer Tender; Mason Tender; Stone Mason Tender; Jackhammer Operator; Pavement Breaker Operator; Cement Handler (bulk or bag); Cement, Mortar or any other substitute or composition mixer - mixer, one bag; Concrete Vibrator Operator; Concrete Puddler; Hand Cement Mixer; Hand Frame or Pneumatic Concrete & Power Operated Tamper Operator; Chipping Hammer Operator; Power Buggy Operator; Kettleman; Pump Operator 3" & Under; & Torchman Demolition
CLASS 3: Cement Gun Operator; Nozzleman; Concrete Saw - Core Drill; Gunite Machine Operator; & Underground work which is 8' or more below the adjoining ground where the excavation is not more than 8' wide
CLASS 4: Pipe Handler (water, gas, cast iron & non-metallic)
CLASS 5: Pipe Layer - non-metallic
CLASS 6: Power Chain Saw Operator

CLASSIFICATION DEFINITIONS (CONT'D)

LABORERS CLASSIFICATIONS (Site Preparation, Excavation & Incidental Paving)

ALL AREAS:

CLASS 1: Unskilled; Bituminous Batcherman (Stationary Plant); Blacksmith Tenders; Cement Coverman Batch Truck; Cement Handler - Bulk, Bag; Carpenter Tender; Concrete Batcherman; Concrete Handler, Caisson, Footings, Columns, Piling, Slabs, etc.; Concrete Shoveler, Temper & Puddler (Paving); Concrete Longitudinal Floatman (manual bullfloat on paving); Damp Proofer below grade; Drill Runner Tender; Dumpman (dirt, paver, dumping batchtrucks, etc.); Hydrant & Valve Setter; Joint Filler (concrete pavement); Kettleman (bituminous or lead); Labor Wrecking Demolition; Landscape Gardener, sod, etc.; Pipe Derrickman (tripod, manual); Pipe Handler; Power Buggy Operator; Powder Monkey; Reinforced Steel Laborer; Reinforced Steel Setter (paving); Service Connection Maker (water, gas); Squeegeeman; Stabilizing Batcherman (stationary plant); Temporary Heater & Blower Tender; Tool Crib Checker; Top Man (sewer, water or gas trench); Winch Handler (manual)

CLASS 2: Bituminous Worker - Shoveler, Raker, Floater, Squeegee, Utility; Brick Tender; Compaction Equipment (hand operated); Conduit Layer; Curb Setter; Mortar Mixer; Sand Cushion Bedmaker; Torchman - gas, electric, thermal or similar device

CLASS 3: Chain Saw; Concrete Drilling; Concrete Mixer Operator; Concrete Sewer; Concrete Vibrator; Ditch & other work more than 8' below starting level of manual work; Formsetter; Joint Sewer, Mortar; Pneumatic Tools, Jackhammer, Paving Buster, Chipping Hammer, etc.; Stone Tender; & Mason Tender

CLASS 4: Bottom Man (sewer, water or gas trench) (more than 8' below starting level of manual work); Brick or Block Paving Setter; Caisson Work; Cofferdam Work; Tunnel Laborer; Underground Laborer; & Underpinning

CLASS 5: Cement Gun Operator (1½" or over); Driller - Air Track or similar; Nozzleman (gunite, sandblasting, cement); & Pipelayer, Laser Beam (sewer, water, gas)

CLASS 6: Blaster Powder Man (Dynamite or substitute products); Tunnel Miner (atmospheric); & Tunnel Miner Tender

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Building Construction)

ALL AREAS:

GROUP 1: Helicopter Operator; Truck & Crawler Cranes with 300' of Boom & over, Inclu. jib; Tower Crane 300' & over

GROUP 2: Truck & Crawler Crane with 200' of Boom, up to & not inclu. 300' of Boom, Inclu. jib; Tower Crane 250' & over

GROUP 3: Truck & Crawler Cranes with 150' of Boom, up to & not Inclu. 200' of Boom, Inclu. jib; Tower Crane 200' & over

GROUP 4: Traveling Tower Crane; Master Mechanic; Pile Driving Operator; Tower Crane 150' & over

GROUP 5: Truck & Crawler Cranes up to & not inclu. 150' of Boom, inclu. jib; Derrick (Guy & Stiffleg); Hoist Engineer (3 drums or more); Locomotive Operator; Overhead Crane Op. (Inside Building Perimeter); Tower Cranes - Stationary 100' & over; Tractor Operator with Boom; All Terrain Vehicle Cranes; Fireman, Chief License

GROUP 6: Air Compressor Operator, 450 CFM or over, Pump Operator and/or Conveyor Operator (2 or more machines); Hoist Engineer (2 drum); Mechanic or Welder; Pumpcrete or Complaco-type Machine Operator; Forklift; Boom Truck Operator; Concrete Mixer Op.; Drill Rigs - Heavy Rotary or Churn when used for caisson drilling for Elevator Cylinder or Building Construction; Front End Loader Operator; Hoist Engineer (one drum); Straddle Carrier Operator; Power Plant Engineer (100 KW and over on multiples equal to 100 KW and over); Tractor Operator over D2; & Well Point Pump Operator

CLASSIFICATION DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS CLASSIFICATIONS (Building Construction) Cont'd

ALL AREAS:

GROUP 7: Concrete Batch Plant Operator; Fireman, First Class License; Gunite Operator; Tractor Operator D-2 or similar size; Front End Loader Operator, up to 1 cu. yd.

GROUP 8: Air Compressor Operator, 450 CFM or over, Pump and/or Conveyor Operator; Fireman, Temporary Heat; Brakeman; Pick-up Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oiler; & Welding Machine Operator

GROUP 9: Mechanical Space Heater (temporary heat); Oiler or Greaser; Elevator Operator

POWER EQUIPMENT OPERATORS CLASSIFICATIONS
(Site Preparation, Excavation, & Incidental Paving)

ALL AREAS:

GROUP 1: Helicopter Pilot; Crane with over 135' Boom, excluding jib; Dragline and/or other similar equipment with Shovel-type controls 3 cu. yds. & over Mfg. rated cap.; Pile Driving when 3 Drums are in use

GROUP 2: Cableway; Concrete Mixer, Stationary Plant over 34S; Derrick (Guy or Stiffleg) (Power) (Skids or stationary); Dragline and/or similar equipment with Shovel-type controls, up to 3 cu. yds. Mfg. rated cap.; Dredge or Engineers, Dredge (power) & Engineer; Front End Loader, 5 cu. yds. & over; Grader or Motor Patrol, Finishing Earthwork & Bituminous; Locomotive Crane; Master Mechanic; Mixer (Paving) Concrete Paving, Road; Mole, inclu. Power Supply; Mucking Machine, inclu. Mucking Operations, Conway or similar type; Piledriving; Refrigeration Plant Engineer; Tandem Scraper; Tractor - Boom type; Truck Crane - Crawler Crane; & Tugboat - 100 HP & over

GROUP 3: Dual Tractor; Elevating Grader; Pumpcrete; Scraper - Struck Cap. 32 cu. yds. & over; Self-propelled Traveling Soil Stabilizer

GROUP 4: Air Track Rock Drill; Asphalt Bituminous Stabilizer Plant; Automatic Road Machine (CMI or similar); Backfiller; Batch Plant (Concrete); Bituminous Spreader & Finishing (Power); Boom Truck (Power operated Boom); Cat Tractors with Rock Wagons or similar types; Chip Harvester & Tree Cutter over 150 HP; Concrete Mixer on jobsite over 14S; Concrete Mobile; Crushing Plant (gravel & stone) or Gravel Washing, Crushing & Screening Plant; Curb Machine; Dope Machine (Pipeline); Drill Rigs, Heavy Rotary or Churn or Cable Drill; Fork Lift or Straddle Carrier; Fork Lift or Lumber Stacker; Front End Loader, over 1 cu. yd.; Hoist Engineer (power); Launcherman (Tankerman or Pilot License); Lead Greaser; Locomotive; Mechanic or Welder; Multiple Machines, such as Air Compressors, Welding Machines, Generators, Pumps; Paving Breaker or Tamping Machine (Power Driven) Mighty Mite or similar type; Paving Milling Machine; Pickup Sweeper, 1 cu. yd. & over Hopper cap.; Pipeline Wrapping, Cleaning or Bending Machine; Power Plant Engineer, 100 K.W.H. & over; Power Actuated Horizontal Boring Machine, over 6"; Pugmill; Roller, 8 tons & over; Rubber-tired Farm Tractor, Backhoe Attach.; Sheep Foot Rollers; Slip Form (Power Driven) (paving); Tie Temper & Ballast Machine; Tractor, over D2, TD6 or similar HP with Power Take-off; Tractor, over 50 HP without Power Take-off; Trenching Machine (sewer, water, gas); Turnapull (or similar type); Well Point Installation, Dismantling or Repair Mechanic; Hydraulic Tree Planter

GROUP 5: Air Compressor, 450 CFM or over; Bituminous Spreader & Bituminous Finishing Machine (Tender) (Power); Concrete Distributor & Spreader Finishing Machine; Longitudinal Float, Joint Machine, & Spray; Concrete Mixer on jobsite 14S & under; Concrete Saw (multiple blade) (power operated); Form Trench Digger (power); Front End Loader, up to & inclu. 1 cu. yd.; Grader (motor patrol); Gunite Gunell; Hydraulic Log Splitter; Loader (Barber Greene or similar type); Payhauler or similar type; Power Actuated Augers & Boring Machine; Power Actuated Jacks; Pumps; Roller; Self-propelled Chip Spreader (Flaherty or similar); Shouldering Machine (Power) Apsco or similar type inclu. self-propelled Sand & Chip Spreader; Stump Chipper; Tractor, D2, TD6 or similar HP without power take-off; & tree Farmer

CLASSIFICATION DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS CLASSIFICATIONS
(Site Preparation, Excavation, & Incidental Paving) Cont'd

ALL AREAS:
GROUP 6: Conveyor; Dredge Deck Hand; Fireman or Tank Car Heater; Gravel Screening Plant (portable not crushing or washing); Greaser (Truck or Tractor); Leverman; Mechanic Tender; Mechanic, Space Heater (Temporary Heat); Oiler (Power Shovel, Crane, Dragline); Self-Propelled Vibrating Packer (Pad type) (35 HP & over); Tractor, 50 HP or less w/o Power take-off; & Truck Crane Oiler

TRUCK DRIVERS CLASSIFICATIONS (Building)

AREA 1:
GROUP 1: Boom Truck Operator
GROUP 2: Ready-Mix; & Tractor Trailer
GROUP 3: Mechanic; Fork Lift Operator; Tandem or Three Axles
GROUP 4: Farm Tractor; Single or Two Axles; & Dumpman

TRUCK DRIVERS CLASSIFICATIONS
(Site Preparation, Excavation, & Incidental Paving)

ALL AREAS:
GROUP 1: Boom; Mechanic; Off-Road; Tractor Trailer; Truck Driver (Operation of Hand & Power Operated Winches); & Truck Trains
GROUP 2: Tri Axles (Including Four Axles)
GROUP 3: Bituminous Distributor; & Tandem Axles
GROUP 4: Bituminous Distributor Spray Operator (Rear End Oiler); Dumpman; Pilot Car; Self-Propelled Packer; Single Axles; Slurry Operator; Tank Truck (Gas, Oil, Road Oil & Water); Teamster & Stablemanj Tractor Operator (Wheel Type Used for any Purpose)

The Following Classifications Shall Come Under the Appropriate Axle Rate Wage Group:
"A" Frame; Dry Batch Hauler; Dump; Ready-Mix Concrete; Slurry; Tank (Gas, Oil, Road Oil & Water)

PAID HOLIDAYS (WHERE APPLICABLE):
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; & G-Christmas Day

FOOTNOTES:
a. Employer contributes 8% of regular hourly rate to vacation pay credit for employees who have worked in the business more than 5 years; 6% for employees who have worked in business less than 5 years;
b. 7 Paid Holidays: A through G
c. 1 week's paid vacation - 1 year's service; 2 weeks' paid vacation - 3 years' service
d. 6 Paid Holidays: A, C, D, E, G, & Decoration Day
e. 5 to 12 years' service - 2 weeks' paid vacation; 12 or more years' service - 3 weeks' paid vacation
f. 2 weeks' paid vacation
g. 1 Paid Holiday: D
h. 2 Paid Holidays: C & D
i. $.56 to SASMI
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: NEW YORK COUNTY: ONEIDA
DECISION NO.: NY85-3007 DATE: DATE OF PUBLICATION
Supersedes Decision No. NY81-3034 dated June 5, 1981 in 46 FR 30271.
DESCRIPTION OF WORK: Heavy Construction (except water wells) and Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits
BOILERMAKERS	18.16	3.691
BRICKLAYERS & STONE MASONS	13.35	3.85
CARPENTERS	15.095	2.045 +a
CEMENT MASONS	14.22	2.62+b
ELECTRICIANS		
Verona and Vienna Twps. West of State Highway 13		
Electricians	17.10	3.25+ 3%
Cable Splicer	18.20	3.25+ 3%
Remainder of County		
Electricians	15.45	3.08+ 3%
Cable Splicer	16.95	3.08+ 3%
IRONWORKERS		
Structural, Ornamental, Reinforcing, Machinery, Mover, Rigger, Rodman, Fence Erector and Stone		
Derrickman	14.03	3.62
Sheeter	14.28	3.62
Sheeter, bucker-up	14.155	3.62
LABORERS:		
Florence, Camden, Annsville, Lee, Ava, Boonville, Western, Steuben, Vienna, Rome, Floyd Westmoreland, Vernon, Augusta, Verona		
Class A	12.99	2.25+c
Class B	13.18	2.25+c
Class C	13.39	2.25+c
Class D	13.59	2.25+c
Remainder of County		
Class A	12.04	3.20+c
Class B	12.24	3.20+c
Class C	12.44	3.20+c
Class D	12.64	3.20+c
LINE CONSTRUCTION:		
Substations and switching structures; Pipe type cable installation and maintenance jobs or projects; Railroad catenary installation and maintenance; Bonding of rails:		
Lineman; Technician	17.75	4.35+d +6.25%
Cable splicer	19.525	4.35+d +6.25%
Groundman digging machine operator; dynamite man	15.975	4.35+d +6.25%
Groundman truck driver (tractor trailer unit)	15.088	4.35+d +6.25%
Mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+d +6.25%
Groundman	10.098	4.35+d +6.25%
Overhead transmission line work (where no other work is or has been involved; Overhead & underground distrubution work:		
Lineman; Technician	16.83	4.35+d +6.25%
Groundman digging machine operator; groundman dynamite man	15.147	4.35+d +6.25%
Groundman truck driver (tractor trailer unit)	14.306	4.35+d +6.25%
Groundman mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+d +6.25%
Groundman	10.098	4.35+d +6.25%
Overhead transmission line work (where other work is or has been involved):		
Lineman; Technicians	19.61	4.35+d +6.25%

DECISION NO. NY85-3007

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D)		
Groundman digging machine operator; dynamite man	17.649	4.35+d +6.25%
Groundman truck driver (tractor trailer unit)	16.669	4.35+d +6.25%
Mobile equipment operator; Groundman truck driver; mechanic	15.688	4.35+d +6.25%
Groundman	10.098	4.35+d +6.25%
PAINTERS:		
Brush, roller	12.10	3.25
Taping	12.35	3.25
Spray; epoxy brush and roller application	12.60	3.25
Epoxy and special coatings spray application	12.80	3.25
Sandblasting	12.95	3.25
Boatswain Chair	12.85	3.25
Swing	12.75	3.25
Structural Steel	12.70	3.25
Bridge	13.30	3.25
PLUMBERS & PIPEFITTERS	15.11	4.35
POWER EQUIPMENT OPERATORS		
Class 1	15.86	4.25+c
Class 2	15.32	4.25+c
Class 3	13.79	4.25+c
Class 4	12.44	4.25+c
SPRINKLER FITTERS	16.92	3.23
TRUCK DRIVERS		
Class 1	13.49	2.45+c
Class 2	13.54	2.45+c
Class 3	13.59	2.45+c
Class 4	13.74	2.45+c
Class 5	13.69	2.45+c

Basic Hourly Rates	Fringe Benefits

DECISION NO. NY85-3007

WELDERS - Rate for the craft to which the welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day, B-Memorial Day, C-Independence Day, D-Labor Day, E-Thanksgiving Day, F-Christmas Day

a. Paid Holidays: C and D, provided the employee works his scheduled day before and his scheduled day after the holiday and is on the payroll in payroll week in which the holiday falls.

b. Paid Holidays: A, B, C, and D.

c. Paid Holidays: A thru F, provided the employee works the working day before and the working day after the holiday.

d. Paid Holidays: A thru F, plus Washington's Birthday, Good Friday and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

CLASSIFICATION DESCRIPTIONS

LABORERS:

CLASS A: Laborers, drill helpers, outboard and hand boats.

CLASS B: Bull float, chain saw, concrete aggregate, bin concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw op. on asphalt paver, water pump op. (1 1/2" and single diaphram), nozzle (asphalt, gunnite, seeding and sandblasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborers.

CLASS C: All rock or drill machine operators (except quarry master and similar type), acetylene torch op., asphalt raker, powderman.

CLASS D: Blasters, form setter, stone or granite curb setters.

DECISION NO. NY85-3007

POWER EQUIPMENT OPERATORS

GROUP I - Automated concrete spreader (CMI), automatic fine grader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), blacktop plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity), concrete pump (8" or over), crane, cranes & derricks (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated) (gradall or similar), fork lift (factory rated 15 ft. and over), front end loader (4 c.y. and over), head tower (sauerman or equal), hoist (2 or 3 drum), Holland loader mine hoist, mucking machine or mole, over head crane (gantry or straddle type), piledriver, slip form paver, tractor drawn belt-type loader, truck crane, truck or trailer mounted log chipper (self-feeder), tug operator (except manned rented equipment); tunnel shovel.

GROUP II - Backhoe (tractor mounted, rubber tired), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill (truck or tractor mounted), boring machine, cage-hoist, central mix plant (non-automated) and all concrete batching plants, cherry picker (5 tons capacity and under), compressors (4 or less) exceeding 2000 C.F.M. combined capacity, concrete paver (over 16S), concrete pump (under 8"), crusher, diesel power unit, drill rigs (tractor mounted), front end loader (under 4 c.y.), hi-pressure - boiler (15 lbs. and over), hoist (one drum) Kolman plant loader and similar type loaders, L.C.M. work boat operator, locomotive, maintenance engineer/greaseman/welder, mixer (for stabilized base self-propelled), monorail machine, plant engineer, pump crete, ready mix concrete plant, refrigeration equipment (for soil stabilization), road widener, roller (all above subgrade), sea mule tractor with dozer and/or pusher, trencher, tugger-hoist, winch, winch cat.

GROUP III - A-frame truck, ballast regulator (ride-on), compressors (4 not to exceed 2000 C.F.M. combined capacity; or 3 or less with more than 1200 C.F.M. but not to exceed 2000 C.F.M.), dust collectors, generators, pumps, welding machines, light plants (4 of any type of combination), concrete pavement spreaders and finishers, conveyor, drill-core, electric pump used in conjunction with well point system, farm tractor with accessories, fine grade machine, fork lift (under 15 ft.), grout pump gunite machine, hammers (hydraulic-self-propelled), hydra-spiker (ride-on), hydro-blaster water, post hole digger and post driver, power sweeper, roller (grade and fill), scarifier (ride-on), spansaw (ride-on), submersible electric pump (when used in lieu of well point system), tamper (ride-on), tie extractor (ride-on), tie handler, tie inserter (ride-on), tie spacer (ride-on), track liner, tractor with towed accessories, vibratory compactor, vibro tamp, well point.

DECISION NO. NY85-3007

POWER EQUIPMENT OPERATORS (Continued)

GROUP IV - Aggregate plant, boiler (used in conjunction with production), cement and bin operator, compressors (3 or less not to exceed 1200 C.F.M. combined capacity), dust collectors, generators, pumps, welding machines, light plants (3 or less of any type or combination), concrete paver or mixer (16S and under), concrete saw (self propelled), fireman, form tamper, hydraulic pump (jacking system), light plants, mulching machine, oiler, parapet concrete or pavement grinder, power broom (towed), power beaterman, Revinius widener, shell winder, steam cleaner, tractor.

TRUCK DRIVERS:

CLASS 1: Warehouseman, yardmen, pickups, panel trucks, flatboy material trucks (straight jobs), single axle dump trucks, dumpsters, material checkers and receivers, greasers, truck tiremen and parts chaser.

CLASS 2: Tandems, batch trucks, mechanics and dispatcher.

CLASS 3: Semi-trailers, low-boy trucks, asphalt distributors trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic.

CLASS 4: Specialized earth moving equipment - euclid type or similar off-highway equipment where not self-loaded, and straddle (ross) carrier.

CLASS 5: Off-Highway tandem back-dump, twin engine equipment and double hitched equipment where not self-loaded.

SUPERSEDEAS DECISION

STATES: CONNECTICUT, DELAWARE, MAINE, MARYLAND, MASSACHUSETTS, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, PENNSYLVANIA & RHODE ISLAND
DECISION NO.: NY85-3009 DATE: DATE OF PUBLICATION
Supersedes Decision No. NY83-3013 dated April 29, 1983 in 48 FR 19560.
DESCRIPTION OF WORK: All Dredging on the Atlantic Coast from the Canadian Border to the southerly border of the State of Maryland & tributary waters emptying into the Atlantic Ocean, the Cheaspeake & Delaware Canal, Baltimore City & Baltimore County, Md.

	Basic Hourly Rates	Fringe Benefits
DIPPER & CLAMSHELL DREDGE		
Operator	15.99	2.23+7%+a
Engineer	15.87	2.23+7%+a
Craneman	15.56	2.23+7%+a
Maintenance Engineer	15.34	2.23+7%+a
Welder	15.12	2.23+7%+a
Mate	14.38	2.23+7%+a
Fireman and Oiler	13.28	2.23+7%+a
Deckhand, Handyman and Tug Deckhand	12.97	2.23+7%+a
Scowman and Rodman	12.82	2.23+7%+a
HYDRAULIC DREDGES:		
Leverman	15.72	2.23+7%+a
Engineer and Derrick Operator	15.56	2.23+7%+a
Maintenance Engineer	15.34	2.23+7%+a
Electricians and Dredge Welder	15.12	2.23+7%+a
Spider Barge Operator	14.98	2.23+7%+a
Mate	14.38	2.23+7%+a
Fireman and Oiler	13.28	2.23+7%+a
Tug Deckhand	12.97	2.23+7%+a
Deckhand; Handyman; Shoreman and Rodman	12.82	2.23+7%+a
COMPANY LEAD DREDGEMAN:		
Lead Dredgeman	15.72	2.23+7%+a
TUG BOATS over 1,000 H.P. (with master or captain having license endorsed for 200 miles off shore):		
Tug Engineer	15.06	2.23+7%+a
Tug Deckhand	13.02	2.23+7%+a
TUG BOATS over 1,000 H.P. (without master or captain having license endorsed for 200 miles off shore):		
Tug Engineer	14.48	2.23+7%+a
Tug Deckhand	12.97	2.23+7%+a
DRILL BOATS:		
Engineer	17.02	2.23+a+b
Blaster	17.20	2.23+a+b
Driller, Welder or Machinist	17.03	2.23+a+b
Fireman	16.48	2.23+a+b
Oiler	16.20	2.23+a+b

FOOTNOTES:

a. 8 Paid Holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and Christmas Day

b. Vacation: 6¼ days vacation with pay for 84 days of service, plus one additional day for each additional period of 21 2/3 days of service, all in one calendar year. Employees not qualifying for vacation as set forth above will receive one day's vacation with pay for each full 20 days of service in one calendar year.

[FR Doc. 85-2397 Filed 1-31-85; 8:45 am]

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Friday, February 1, 1985

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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

4621-4846..... 1

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List January 14, 1985

TABLE OF EFFECTIVE DATES AND TIME PERIODS—FEBRUARY 1985

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

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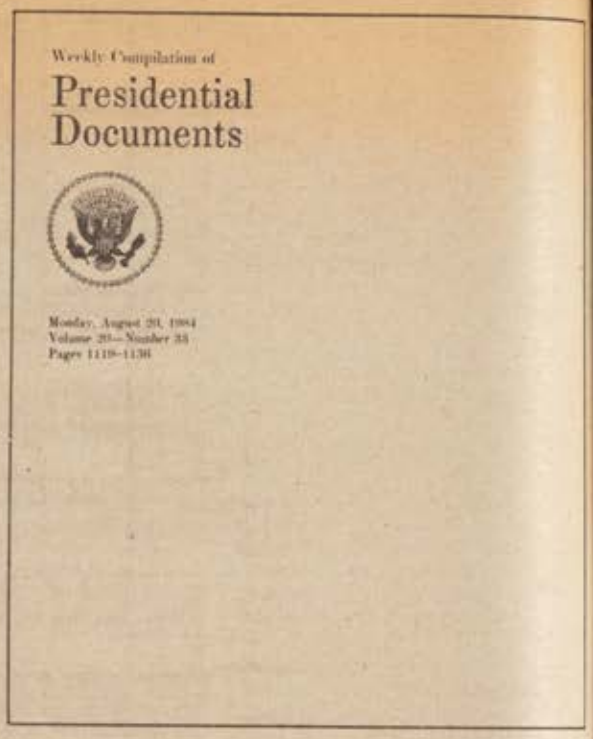
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February 5	February 20	March 7	March 22	April 8	May 6
February 6	February 21	March 8	March 25	April 8	May 7
February 7	February 22	March 11	March 25	April 8	May 8
February 8	February 25	March 11	March 25	April 9	May 9
February 11	February 26	March 13	March 28	April 12	May 13
February 12	February 27	March 14	March 29	April 15	May 13
February 13	February 28	March 15	April 1	April 15	May 14
February 14	March 1	March 18	April 1	April 15	May 15
February 15	March 4	March 18	April 1	April 16	May 16
February 19	March 6	March 21	April 5	April 22	May 20
February 20	March 7	March 22	April 8	April 22	May 21
February 21	March 8	March 25	April 8	April 22	May 22
February 22	March 11	March 25	April 8	April 23	May 23
February 25	March 12	March 27	April 11	April 26	May 28
February 26	March 13	March 28	April 12	April 29	May 28
February 27	March 14	March 29	April 15	April 29	May 28
February 28	March 15	April 1	April 15	April 29	May 29

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